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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~392.~~ 69

DANIEL D. T. FARNSWORTH AND PHILIP THOMAS,
APPELLANTS,

vs.

JOSEPH DUFFNER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED AUGUST 4, 1888.

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1 UNITED STATES OF AMERICA, }
District of West Virginia. }

Proceedings in chancery before the district court of the United States for the district of West Virginia, at the judiciary building of the United States, in the city of Wheeling, in said district, on the 12th day of February, A. D. 1866, and in the 110th year of the Independence of the United States of America.

Be it remembered that heretofore, to wit, on the 12th day of February, 1866, came Joseph Duffner, by his counsel, and sued out of the clerk's office of said court a writ of summons in chancery against Daniel D. T. Farnsworth, Philip Thomas, M. S. Thomas, A. B. Clark, Henry B. Coon, L. S. S. Farnsworth, Cyrus Hinkle, John A. Crislip, W. D. Farnsworth, William C. McCormick, William H. Helphenstine, Alfred M. Smith, Valentine Strader, Philip Reger, J. J. Morgan, administrator of the estate of Jackman Cooper, deceased; Vivian P. Weir and James M. Weir, her husband; Victoria V. Hart and Creed W. Hart, her husband; Mary W. Rohrbough, A. B. Rohrbough, Laura W. Owens, J. C. Owens, Matilda Cooper, and Adaline Cooper, all citizens of the State of West Virginia; William H. Westfall, in his own right and as executor of the will of Henry F.
2 Westfall, deceased, a citizen of the State of Texas; George Henning and John C. Henning, citizens of the State of Pennsylvania, and Lewis A. Munks, a citizen of the State of Maryland; which writ is in the words following, to wit:

Writ.

The President of the United States of America to Daniel D. T. Farnsworth, Philip Thomas, M. S. Thomas, A. B. Clark, Henry B. Coon, L. S. S. Farnsworth, Cyrus Hinkle, John A. Crislip, W. D. Farnsworth, William C. McCormick, William H. Helphenstine, Alfred M. Smith, Valentine Strader, Philip Reger; J. J. Morgan, administrator of the estate of Jackman Cooper, deceased; Vivian P. Weir and James M. Weir, her husband; Victoria V. Hart and Creed W. Hart, her husband; Mary W. Rohrbough, A. B. Rohrbough, Laura W. Owens, J. C. Owens, Matilda Cooper, and Adaline Cooper, all citizens of the State of West Virginia; William H. Westfall, in his own right and as executor of the will of Henry F. Westfall, deceased, a citizen of the State of Texas; George Henning and John C. Henning, citizens of the State of Pennsylvania, and Lewis A. Munks, a citizen of the State of Maryland, Greeting:

We command you that on the first Monday in March next,
3 at rules, to be held in the clerk's office of the district court of the United States for the district of West Virginia, laying all other matters and excuses aside, you do cause an appearance to be entered for you in said court to a bill in chancery filed against you by Joseph Duffner, a citizen of the State of Ohio, and that you do answer concerning such things as shall then and there be alleged

against you, and observe what the court shall direct in this behalf, upon pain of an attachment issuing against your person and such other process of contempt as the court shall award.

Witness the Honorable John J. Jackson, judge of the district court of the United States for the district of West Virginia, at Wheeling, this 12th day of February, 1886, and in the 110th year of the Independence of the United States of America.

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

MEMORANDUM.—The defendants to enter their appearance in the suit mentioned in the foregoing writ, in the clerk's office therein mentioned, on or before the day on which the writ is returnable; otherwise the bill will be taken *pro confesso*.

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

4 Marshal's return endorsed on and attached to the writ:

Executed the within writ by delivering an office copy to each of the following-named defendants personally, at Upshur county, West Va., on the 24th day of February, 1886: Daniel D. T. Farnsworth, A. B. Clark, L. S. S. Farnsworth, Cyrus Hinkle, John A. Crislip, J. J. Morgan, adm'st'r; Victoria V. Hart, Creed M. Hart, Matilda Cooper, Adelia Cooper, and by delivering office copy to each of the following-named defendants, at Upshur county, West Va., on the 25th day of February, 1886: Henry C. Coon, W. D. Farnsworth, Valentine Strader, Philip Reger; and to Alfred M. Smith, at Lewis county, the same date, and to M. A. Thomas, not being found at his usual place of abode, by delivering an office copy to his wife, at his usual place of abode, in Weston, Lewis county, West Va., and explaining to her the purport of the same; as to Mary M. Rohrbough and A. B. Rohrbough, by delivering an office copy to each of them personally, at Fairmont, Marion county, West Va., on the 26th day of February, 1886.

Philip Thomas, W. C. McCormick, Wm. H. Helphenstine, Vivan P. Wier, James M. Wier, Laura M. Owens, J. C. Owens, Wil-
5 liam H. Westfall, George Henning, and John C. Henning and Lewis A. Munks not found.

THOS. P. SHALLCROSS,
Dept., for C. Schon, U. S. Marshal, Dist. of West Virginia.

It has been suggested that Wm. C. McCormick is now a citizen of Kansas; Wm. H. Hephenstine, of Wainsburg, Pa.; James W. Wier, Victoria B. Wier, of Lancaster, O.; J. C. Owns & Laura W. Owns, of Vincennes, Ind.; Wm. H. Westfall, of Texas; Geo. Henning, John C. Henning, of Carney, Wyoming Co., Pa., and Lewis A. Munks, of the city of Baltimore, Md.

THOS. P. SHALLCROSS,
Dep'y, for C. Schon, U. S. Marshal, Dist. of West Virginia.

Endorsed as follows: U. S. court. Joseph Duffner *vs.* D. D. T. Farnsworth. Equity. Executed as set forth in the within paper,

hereunto annexed. Thos. P. Shalleross, dep'ty, for C. Sehon, U. S. marshal, dist. West *West* Va. Wheeling, W. Va., Feb. 27th, 1886. Marshall fees, $47.46.

6 *Bill.*

And at another day, to wit, on the 12th day of February, A. D. 1866, came the complainant, by his counsel, and filed his bill of complaint; which bill is in these words, to wit:

In the District Court of the United States for the District of West Virginia.

JOSEPH DUFFNER
vs.
DANIEL D. T. FARNSWORTH and Others.

To the Honorable John J. Jackson, judge of the said court:

Joseph Duffner, of the city of Cleveland and a citizen of the State of Ohio, brings this his bill against Daniel D. T. Farnsworth, Philip Thomas, M. S. Thomas, A. B. Clark, Henry B. Koon, L. S. S. Farnsworth, Cyrus Hinkle, John A. Crislip, W. D. Farnsworth, William C. McCormick, William H. Helphanstine, Alfred M. Smith, Valentine Strader, Philip Reger, J. J. Morgan, administrator of the
7 estate of Jackman Cooper, deceased; Viviana P. Weir and James M. Weir, her husband; Victoria V. Hart and Creed W. Hart, her husband; Mary M. Rohrbough, A. B. Rohrbough, Laura V. Owens, J. C. Owens, Matilda Cooper, and Adelia Cooper, all citizens of the State of West Virginia; William H. Westfall, in his own right and as executor of the will of Henry F. Westfall, deceased, a citizen of the State of Texas; George Henning and John C. Henning, citizens of the State of Pennsylvania, and Lewis A. Muaks, a citizen of the State of Maryland; and therefore your orator complains and says that there is in the counties of Upshur, Webster, and Randolph, in the State of West Virginia, a tract, consisting of about forty thousand acres of land, which has long been known as the "Thomas Wilson survey." The said tract of land was by the sheriff of Upshur county returned delinquent for the non-payment of the taxes assessed thereon for the year 1876, in the name of William H. Morton, and was advertised to be sold by the said sheriff on the 10th day of December, 1877, with other delinquent lands. On the last-named day the said sale was adjourned, and it was not in fact made until the 12th day of December, 1877.
On the 11th day of December, 1877, a number of the de-
8 fendants and some other persons, all of whose names appear in the contract next hereinafter mentioned, entered into an agreement among themselves reciting the anticipated sale, and agreeing among themselves that at such sale they would purchase the said land, which was when purchased to be held by them in

such proportions as were specified in the said agree-
Exhibit "A." ment. A certified copy of this agreement is herewith filed, marked "Exhibit A," and your orator prays that the same may be taken and read as part of this bill.

Your orator further shows that on the day following the making of this agreement, to wit, on the 12th day of December, 1877, the said tract of land was sold by the said sheriff and was purchased by the parties to the said agreement for the sum of $642.20. Your orator charges that at the time of making the said purchase the parties to the said agreement were acquainted with the previous history of the title of the said William H. Morton to the said tract of land and knew that Morton had no title to the said land, and that they were acquiring none by the said purchase, and especially were they acquainted with the particular vices in the said title which are hereinafter mentioned.

Between the time of the making of the said purchase and
9 the time of the making of the *said purchase and the time of the making of the* deed next hereinafter mentioned Watson Westfall, one of the said purchasers, assigned his interest in the purchase to one Solomon Day, and on the 26th day of February, 1879, C. C. McWhorter, clerk of the county court of Upshur county, executed a deed purporting to convey the said tract of land to the said George Henning, John C. Henning, Lewis A. Munks, M. S. Thomas, Daniel D. T. Farnsworth, J. Earle Newlon, A. B. Clark, Henry C. Koon, L. S. S. Farnsworth, Cyrus Hinkle, J. A. Crislip, J. J. Farnsworth, W. S. Loudion, W. D. Farnsworth, Henry F. Westfall, T. P. Helphenstine, W. H. Helphenstine, A. M. Smith, Jackman Cooper, Valentine Strader, Philip Reger, and Solomon Day, which deed was duly acknowledged and was recorded in Upshur county on the 27th day of February, 1879. A certified copy of
Exhibit "B." this deed is herewith filed, marked "Exhibit B," and your orator prays that the same may be taken and read as a part of this bill.

Your orator further shows that on the 8th day of July, 1879, the said J. Earle Newlon, with his wife, conveyed all his interest in the said tract of land to J. J. Farnsworth and J. A. Crislip, and that on the 12th day of April, 1881, the said Solomon Day conveyed
10 all his interest in the said tract of land to L. S. S. Farnsworth, and that on the 19th day of May, 1881, the said J. J. Farnsworth, with his wife, conveyed all his interest in the said tract of land to the said L. S. S. Farnsworth, and that on the 18th day of May, 1883, the said Thomas P. Helphenstine conveyed all his interest in the said tract of land to the said W. C. McCormick.

Your orator further shows that since the conveyance, which is hereinafter particularly mentioned, to your orator and Charles Duffner and Mathew Duffner was made the said Jackman Cooper has died and the said J. J. Morgan has been duly appointed and qualified as the administrator of his estate, and that the heirs-at-law of the said Jackman Cooper are the said Mary M. Rohrbough, the wife of A. B. Rohrbough; Laura V. Owens, the wife of J. C. Owens, and Adelia Cooper, and that his widow is the said Matilda Cooper;

that since the said last-mentioned conveyance to your orator was made the said Henry F. Westfall has died, leaving a will, of which he appointed the said William H. Westfall the executor, and by which he devised his property to the said Viviana P. Weir, the wife of James M. Weir; Victoria V. Hart, the wife of Creed W. Hart, and the said William H. Westfall.

Your orator further shows that while the said Philip
11 Thomas had no real or pretended interest in the said tract of land, yet he was joined with certain of the other defendants in the conspiracy hereinafter set forth to defraud the plaintiff, and that he was one of a committe- of three, the other two being the defendants Daniel D. T. Farnsworth and the said Jackman Cooper, who were empowered by the then pretended owners of the said tract of land to represent and act for them in the sale of the said tract which it was proposed to make; and your orator charges that it was from the first the intention of the said persons who purchased the said land to sell their pretended title to whomsoever they could thereafter defraud into buying the same and deceive into believing that the said title was valid, although they themselves at all times knew that their said pretended title was utterly worthless, and that the said purchasers of the said land from the sheriff and the said William C. McCormick and Philip Thomas, well knowing the worthlessness of the said pretended title which had been so acquired as aforesaid, conspired and associated themselves together to defraud and deceive into believing in the validity of the said pretended title and into purchasing the same whomsoever they could thus deceive and defraud.

12 Your orator further shows that in the latter part of April, 1883, the said committee, composed of the said Daniel D. T. Farnsworth, Philip Thomas, and Jackman Cooper, in order to induce your orator and Mathew Duffner and Charles Duffner, who are hereinafter mentioned, to buy the said tract of land, made numerous false and fraudulent representations with respect thereto to your orator and the said Charles Duffner and Mathew Duffner, and, among other things, falsely and fraudulently represented to your orator and the said Mathew Duffner and Charles Duffner that the said pretended title of the said committee and the others for whom they were acting was a valid and perfect title to the said tract of land, and that a deed made by the persons who afterwards executed the deed to your orator and the said Charles Duffner and Mathew Duffner would convey a valid and perfect title to the said land, except such portions of the same as had been held by actual settlers who had had possession for more than ten years under a claim of title, and also fraudulently and falsely represented that there were more than twenty thousand acres of the said land which had not been so held by actual settlers as aforesaid, and used many other fraudulent means to induce the plaintiff and the said
13 Charles Duffner and Mathew Duffner to believe the said representations, and used other fraudulent means to prevent the said plaintiff and the said Charles Duffner and Mathew Duffner from obtaining from other sources information with reference to the in-

validity of the said title, and induced the said plaintiff and the said Charles Duffner and Mathew Duffner to go through the farce of making a troublesome and expensive journey to view and inspect the said tract of land to ascertain whether it suited them in its physical features; at the same time that the said committee and those for whom they were acting well knew that whether the land suited them or not they never would be able to acquire the possession of any part of it under the title which the said committee were fraudulently endeavoring to sell them, and in order to induce said plaintiff to accept and confide in the said representations as to the validity of the said title, and in order to prevent the said plaintiff from making inquiries in other directions respecting the same, the said Daniel D. T. Farnsworth, at the time of making the said representations respecting the said title, also represented to the said plaintiff that he,

14 the said Daniel D. T. Farnsworth, had been Gove-nor of the State of West Virginia and a member of the senate of the same State, and was at the time of making such representations the president of a bank and the president of a railroad company and a member of the Baptist Church, and had heretofore built a church edifice, which he pointed out to the said plaintiff, and that he was not such a man as would deceive or take advantage of the said plaintiff or would have anything to do with titles to land unless they were good titles.

Your orator further shows that he and the said Charles Duffner and Mathew Duffner were deceived by the representations so made and relied upon them in ignorance of their falsity, — afterwards, to wit, on the 24th day of April, 1883, entered into a contract with the said committee, acting for themselves and for the other pretended owners of the said tract of land, whereby the said plaintiff and the said Charles Duffner and Mathew Duffner agreed to purchase the rights and title of the then pretended owners of the said tract of land and agreed to pay for the same the sum of twenty thousand dollars.

The said committee then represented to the plaintiff and the said Charles Duffner and Mathew Duffner that two of their number, to wit, the said Daniel D. T. Farnsworth and Philip Thomas,

15 were entitled to receive five thousand dollars of the said twenty thousand dollars, and that the other pretended owners of the said land were to receive the remaining fifteen thousand dollars, the five thousand being set apart to the said Daniel D. T. Farnsworth and Philip Thomas because of their services as members of the said committee. A copy of the said contract is Exhibit "C." herewith filed, marked "Exhibit C," and your orator prays that the same may be taken and read as part of this bill. At the time when this contract was entered into your orator paid to the said committee on account thereof the sum of one hundred dollars, and a few days afterwards, on his return home to Cleveland, to wit, on or about the 4th day of May, 1883, he sent to the said Daniel D. T. Farnsworth, as a member of the said committee, on account of the said contract the sum of two thousand dollars, being at the time when he so sent the last-named sum still ignorant

of the fraud which was being perpetrated upon him and relying still upon the said representations.

In the month of July, 1883, the plaintiff went from his home, in Cleveland, to the town of Buckhannon for the purpose of completing his purchase and making arrangements for taking possession
16 of the said tract of land, and he took with him from Cleveland an attorney-at-law, who was, however, not learned in the laws of this State and not a member of the bar of this State. Your orator had as early — the 18th day of May, 1883, sent a written request to the said Daniel D. T. Farnsworth for an abstract of the title of the said land, of which request the said Farnsworth took no notice whatever and with which he wholly failed to comply, and as a part of the scheme to defraud the plaintiff, and in order to prevent the plaintiff from investagating the said pretended title, the said Farnsworth falsely and fraudulently represented to your orator that the attorneys-at-law practicing at the bar of Upshur county were wholly unreliable. Believing this last false representation and relying on the representation made by the said Daniel D. T. Farnsworth and the other members of the said committee with reference to the validity of the said title, your orator deemed it unnecessary to employ counsel from other parts of the State of West Virginia, and took with him the said Ohio attorney, who was an old friend of his, rather as a companion of his journey and as a sensible and reliable man than as an adviser learned in the law.

17 Your orator further shows that while he and the said attorney were in the town of Buckhannon the said Daniel D. T. Farnsworth and the other members of the said committee, as well as others of the pretended owners of the said tract of land, repeated to your orator and the said attorney the representations which they had theretofore made, and by their fraudulent representations and conduct not only induced the said attorney and your orator to believe in the validity of the said title, but also used means to prevent your orator and the said attorney from enquiring about or examining into the said pretended title and from ascertaining the vices therein, and for that reason neither the said attorney nor your orator nor any person on behalf of your orator, in fact, investigated the title to the said land nor discovered nor was informed of the vices in the same, and your orator did not rely upon the said attorney to make any investigation of the title, nor rely upon any investigation of the title actually made by the said attorney, but, still relying upon the said representations with regard to the said title and being deceived thereby and being in ignorance that the said title was not as good as it was represented to be, your orator accepted from the then pretended owners thereof a deed for
18 their interest, and paid them the sum of twelve thousand nine hundred dollars upon the delivery of the said deed, which was delivered to your orator on the 14th day of July, 1883, and on that day was admitted to record. Your ora-
Exhibit "D." tor files herewith a certified copy of the said deed, marked "Exhibit D," and prays that the same may be taken and read as a part of this bill. Your orator further shows

that the three amounts of money so paid by him as aforesaid, aggregating fifteenthousand dollars, were divided among and accepted by the said Daniel D. T. Farnsworth, M. S. Thomas, A. B. Clark, Henry B. Koon, L. S. S. Farnsworth, Cyrus Hinkle, John A. Crislip, W. D. Farnsworth, Henry F. Westfall, William C. McCormick, William H. Helphenstine, Alfred M. Smith, Jackman Cooper, Valentine Strader, Philip Reger, George Henning, John C. Henning, and Lewis A. Munks and has never been repaid, in whole or in part, to your orator.

But your orator shows that after the making of the said contract copied into Exhibit "C" and before the delivery to your orator of the said deed the said Daniel D. T. Farnsworth and Philip Thomas falsely and fraudulently represented to your orator that some
19 of the other persons interested in the said tract of land were dissatisfied with the sale to your orator, and were unwilling to sign a deed to him, and that it would require peculiar efforts on the part of the said Daniel D. F. Farnsworth and of the said Philip Thomas to induce such other persons to execute the said deed, and that in the course of such efforts the said Daniel D. T. Farnsworth and Philip Thomas would be compelled to visit such other persons, at several different places, in order to secure their signatures and to exercise the influence necessary to induce them to sign the said deed, and they required of your orator that he should pay them for such services the sum of fifteen hundred dollars, to be divided equally between them, and your orator says that, induced by such fraudulent representations, he agreed to give them the said fifteen hundred dollars, and at their instance included the seven hundred and fifty dollars, part thereof which was to be paid to each of them in a note for three thousand two hundred and fifty dollars, which he executed and gave to each of them. These notes were composed in part of the five thousand dollars, a portion of the purchase-money for
20 the said tract of land, which the said Daniel D. T. Farnsworth and Philip Thomas represented to your orator, first, that it belonged to the said committee as their portion of the purchase-money, and afterward that it belonged to the said Daniel D. T. Farnsworth and Philip Thomas, excluding the said Jackman Cooper. Your orator further shows that on the 1st day of November, 1883, before the said last-mentioned notes became due, your orator, at the urgent solicitation of the said Daniel D. T. Farnsworth and the said Philip Thomas, and being still ignorant of the falsity of the representations which had been made to him and of the fraud which had been and was being perpetrated upon him, paid to the said Daniel D. T. Farnsworth and Philip Thomas the sum of five thousand eight hundred dollars, which was received by them in full payment of the said last-mentioned notes. Your orator shows that in the fall of the year 1883 he made arrangements to take possession of the said tract of forty thousand acres of land and expended considerable amounts of money in preparations to utilize it and to bring the timber which was upon the said land into market. An agent, whom he

sent to Upshur county for the purpose, applied to sev-
21 eral of the defendants, and especially to the said Daniel D. T. Farnsworth, to be shown the said tract of land and to be placed in possession thereof; but those to whom the said agent applied refused to show him the said land or to put him in possession thereof, and the said Daniel D. T. Farnsworth advised the said agent that your orator should allow the said tract of land to remain unleased for the succeeding ten years. Alarmed by the course of the defendants in this regard, your orator began and pursued investigations whereby for the first time he discovered the fraud of which he had been the victim. He has been unable to acquire possession and has not, in fact, acquired possession of any portion of the said tract of land. The pretended conveyance so made to him and the said Mathew Duffner and Charles Duffner, as aforesaid, conveyed to the grantees therein no title whatever to the said tract of land, as the grantors therein well knew when the conveyance was made, and the consideration upon which the said plaintiff paid the several sums of money hereinbefore mentioned, aggregating twenty thousand eight hundred dollars, wholly failed.

22 Your orator further shows that, in truth, at the time when the representations to that effect were made to him the said persons then pretending to be the owners of the said tract of land had no title whatever thereto, and your orator charges that neither the said persons nor the grantors in the said deed so made to him and others as aforesaid never at any time, as they at all times well knew, had any valid title to the said tract of land, and your orator shows that at the time of the making of the said representations to him, in April, 1883, there were not nor were there at any subsequent period so much as twenty thousand acres of the said tract which had not been held for ten years by actual settlers with claim of title.

Your orator further shows that at no time after the making of the said contract of April 24th, 1883, were the pretended owners of the said tract of land or any of them dissatisfied with the sale made to your orator and others as aforesaid, nor did it at any time require any peculiar efforts on the part of the said Daniel D. T. Farnsworth or of the said Philip Thomas to induce such persons or any of them to execute the said deed; and, in short, your orator charges

23 that all of the representations with regard to the said land and the said deed, by which he was induced to pay money to the said Daniel D. T. Farnsworth or to the said committee or to the said Philip Thomas, were false and fraudulent, and by reason of the fraud perpetrated upon him your orator has not only lost the various sums of money aggregating twenty thousand eight hundred dollars heretofore mentioned, but has also lost the sum of $500 *dollars* expended in sending an agent to Upshur county and in making other preparations for cutting and bringing to market the timber on the said tract of land, and the sum of $490 in traveling expenses for himself and his agents in making similar preparations, and the sum of $350 in procuring and having prepared, after he had made all of the said payments to the grantors, an abstract of his supposed title, none of which sums he would have expended but for the fraud so

perpetrated upon him as aforesaid. Your orator shows that none of the payments heretofore mentioned were made in whole or in part by the said Mathew Duffner or by the said Charles Duffner, neither of whom was able to raise the money which he had expected
24 to put into the said purchase; and the said Mathew Duffner and Charles Duffner, being unable to raise their portion of the money, executed to your orator, on the 2d day of June, 1883, a quitclaim deed for the said forty-thousand-acres tract
Exhibit "E." of land, a copy of which deed is herewith filed, marked "Exhibit E"; and your orator prays that the same may be taken and read as part of this bill. Your orator shows the invalidity and worthlessness of the title which was sold to him as aforesaid was notorious in Upshur county at the time of the making of the said contract in April, 1883, and would have been readily discovered by your orator but for the fraudulent efforts made by the said Daniel D. T. Farnsworth and others of the defendants to keep the knowledge from him. The said title is and was, when so acquired by your orator as aforesaid, worthless and invalid for several distinct and independent reasons, any one of which would alone be sufficient to demonstrate its invalidity.

First. The tax deed made as aforesaid by the clerk of the county court of Upshur county to George C. Henning and others was wholly void. There was no note or record of any kind in the office of the clerk of the county court of Upshur county of the sheriff's re-
25 port of his said sale until the 10th day of January, 1878, which was considerably more than ten days after the making of such sale.

Second. The said William H. Morton, in whose name the said tract of land was returned delinquent for the non-payment of the taxes of 1876, never had any valid title to the said tract of land, and his only claim of title is composed entirely of a lot of fraudulent papers, admitted to record in the county of Upshur on the 16th day of February, in the year 1876, which is the year in which for the first and only time the land was entered upon the assessment books in the name of the said William H. Morton. A patent for the said tract of land was issued on the 30th day of December, 1795, to Thomas Wilson, and the said fraudulent papers so admitted to record, as aforesaid, were supposed copies of a deed from Thomas Wilson to James Swann, of a power of attorney from John Peter Dumas, trustee for the creditors of James Swann, to August F. Requet; of a deed from John Peter Dumas, by his said attorney, to George W. Howard, and of a deed from George W. Howard to William H. Morton. Sufficient abstracts from these
Exhibit "F." papers are contained in the document herewith filed as "Exhibit F," which your orator prays may be taken and read as a part of this bill. From this it will be
26 seen that all of these papers, except the last, were admitted to record upon certificates purporting to have been made on the 24th day of February, 1867, which was Sunday, by one Frederick Bull, who only goes so far as to certify to the papers as copies of certain papers which were then produced before him. It will be ob-

served that Frederick Bull, in his certificate to the said power of attorney, certifies that August F. Requet personally came and appeared before him on the 24th day of February, 1867, and produced a power of attorney, while on the same day he could do no better for the deed professing to be made by the said Requet himself than to certify that he had compared it with the original, which had been acknowledged by the said Requet before Joseph Strong, a notary public, in the year 1840.

Third. The title which your orator received from the said George Henning and others was and is invalid and worthless by reason of the fact that the said tract of land was and is owned by other persons, claiming under different and valid titles. Your orator is unable to state particularly all of the titles which are better than that conveyed to him as aforesaid, and which cover the said tract of land, but he is informed and believes that there is no part of the said tract of land which is not covered by one or other and in some
27 places by several of the following-named better titles—that is to say:

The title claimed under a patent to Thomas Bond for 69,473½ acres of land, dated on the 20th day of May, 1785.

The title claimed under a patent to Joseph Tidball for 100,000 acres, dated on the 5th day of June, 1795.

The title claimed under a patent to James Welsh for 100,000 acres of land, dated on the 10th day of June, 1795.

The title claimed under a patent to J. Young for 15,000 acres of land, dated on the 5th day of October, 1795.

The title claimed under a patent to Standish Ford for 45,976 acres of land, dated in 1789.

The title claimed under a patent to Robert Patton for 50,029 acres of land, dated on the 16th day of January, 1795.

The title claimed under a patent to David Lynn for 35,062 acres of land, dated on the 3d day of November, 1794.

The title claimed under a patent to W. Stewart for 5,000 acres of land, dated on the 1st day of July, 1785.

The title claimed under patents to Benjamin Reeder, dated on the 20th and 24th days of November, 1793, for 5,132 acres and 5,000 acres of land respectively.

The title claimed under a patent to John Davenport and
28 others for 30,000 acres of land, dated on the 9th day of October, 1793.

The title claimed under a patent to Frederick Fally for 30,000 —, dated on the 5th day of October, 1793.

Your orator is informed and believes and charges that many of these better titles were matters of notoriety in the communities in which the said Daniel D. T. Farnsworth, Philip Thomas, Jackman Cooper, and others of the defendants lived, and were well known to all of the grantors in the deed which was made as aforesaid to your orator and the said Charles Duffner and Mathew Duffner, but were entirely unknown to your orator and the other grantees in the said deed.

Your orator is advised that, in view of the fact that the title which

he supposed he was acquiring is entirely worthless, it is unnecessary for him to tender a reconveyance thereof, but he is entirely willing and here offers to make such reconveyance or otherwise to dispose of his said worthless title as the court may direct.

Your orator therefore prays that process of subpœna may issue against the said Daniel D. T. Farnsworth, Philip Thomas, M. S. Thomas, A. B. Clark, Henry B. Koon, L. S. S. Farnsworth, Cyrus Hinkle, John A. Crislip, W. D. Farnsworth, William C. McCormick, William H. Helphenstine, Alfred M. Smith, Valentine
29 Strader, Philip Reger, J. J. Morgan, administrator of the estate of Jackman Cooper, deceased; Viviana P. Weir and James M. Weir, her husband; Victoria V. Hart and Creed W. Hart, her husband; Mary M. Rohrbough, A. B. Rohrbough, Laura V. Owens, J. C. Owens, Matilda Cooper, Adelia Cooper, William H. Westfall, in his own right and as executor of the will of Henry T. Westfall, deceased; George Henning, John C. Henning, and Louis A. Munks.

The plaintiff waives answers under oath to this bill by the said defendants.

And your orator prays that a decree may be entered in his favor for the payment to him by the said Daniel D. T. Farnsworth, Philip Thomas, M. S. Thomas, A. B. Clark, Henry B. Koon, L. S. S. Farnsworth, Cyrus Hinkle, John A. Crislip, W. D. Farnsworth, William C. McCormick, William H. Helphenstine, Alfred M. Smith, Valentine Strader, Philip Reger, George Henning, John C. Henning, and Lewis A. Munks, and each of them, of the said sums aggregating twenty thousand eight hundred dollars, with interest on the several parcels thereof from the dates on which your orator paid the same, as aforesaid, and for the payment to him by the same defendants
and each of them of the further sum of $1,040.00, being
30 the aggregate of the several amounts so expended by your orator as aforesaid in his preparations to take possession of the said tract of land and in the obtaining of the said abstract of title, and that such proceedings may be taken against the said administrator, widow, and heirs of the said Jackman Cooper, deceased, and the said executor of and devisees under the will of Henry F. Westfall, deceased, as will result in decrees in favor of your orator for the same amounts of money against the estates and representatives of the said Jackman Cooper and Henry F. Westfall. Should it, however, seem to the court upon the hearing of the cause that your orator is not entitled to a decree against the other defendants for so much of the said sum of twenty thousand eight hundred dollars as consists of the five thousand eight hundred dollars paid to the said Daniel D. T. Farnsworth and Philip Thomas as aforesaid, then your orator prays that a decree may be entered in his favor against the said Daniel D. T. Farnsworth and Philip Thomas requiring them to pay to your orator the said sum of five thousand eight hundred dollars and interest thereon from the 1st day of November, 1883, until payment, and that he may
31 have as against the said Daniel D. T. Farnsworth, Philip Thomas, and the other defendants herein the remainder of the relief hereinbefore prayed for.

And your orator prays that he may have such other general relief as to equity may seem meet and the nature of his case may require. And he will ever pray, &c.

M. FRAME AND
HENRY M. RUSSELL,
Solicitors for Plaintiff.

STATE OF WEST VIRGINIA, }
Ohio County, } *ss:*

Joseph Duffner, the complainant named in the foregoing bill, on his oath says that the facts and allegations therein contained, so far as they are stated on his own knowledge are true, and that so far as they are therein stated to be on information he believes them to be true.

JOS. DUFFNER.

Taken, sworn to, and subscribed before me this 12th day of February, 1886.

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

32 Endorsed as follows: U. S. dist. c't. Joseph Duffner *vs.* D. D. T. Farnsworth. Bill & exhibits. Filed Feb. 12th, 1886, 4.30 p. m. Test: Jasper Y. Moore, clerk D. C. U. S., D. W. Va. 1886, March R., bill taken *pro confesso* as to parties served. 1886, April R., D. N. confirmed & set for hearing.

33 EXHIBIT A OF THE BILL.

This contract & agreement, made and entered into this 11th day of December, 1887, by the parties whose names are hereunto subscribed for the purpose of forming themselves into a company for the purpose of purchasing a certain tract of land, containing 40,000 acres, originally surveyed for Thomas Wilson, in the county of Randolph, in the State of Virginia, and reported to be on the waters of the Buckhannon river and now principally in the county of Upshur, and now claimed by W. H. Morton, who obtained a deed for the same from George W. Howard by deed bearing date on the 1st day of July, 1873, and recorded in Deed Book "K," page 174. The said
34 Geo. W. Howard obtained a deed from John Peter Dumas, trustee, by August F. Requit, his attorney-in-fact, for the benefit of the creditors of James Swan, by deed bearing date Oct. the 6th, 1840, and recorded in Deed Book "K," page 172; and the said James Swan obtained a deed for the same from Thomas Wilson, the patentee, bearing date January 1st, 1876, and recorded in Deed Book "K," page 169. Said tract of land was returned delinquent for the year 1876, by the sheriff of Upshur —, West Virginia, for the non-payment of taxes assessed thereon for said year in the name of W. H. Morton, which taxes, interest, damages, sheriff's commission, and such an equal per cent. on all the taxes due on the land sold to individuals as will be sufficient to pay the expenses of ad-

vertizing the full return of all sales made to individuals and the sheriff's receipt and memorandum in describing said tract of land *which* amounts in the aggregate to $642 *dollars* & 20 cts. (six hundred and forty-two dollars and twenty cents). Now, the said parties composing said company mutually agree to purchase said survey at a sale made by the sheriff of Upshur county for delinquent taxes, and that the same shall be paid for as herein described, and, for convenience, shall be termed in shares of one thousand acres, and any party taking more than one share shall leave the number of shares described in the agreement and the amount to be paid by each one who takes one or more shares herein, to wit:

George Henning & John C. Henning, of the county of Wyoming, township of Mehoopany, in the State of Pennsylvania, nineteen shares, at 16 dollars & 90 cents per share, equal to $321.10.

Alfred M. Smith, of the county of Lewis and State of West Virginia, three shares at $16.90 per share, amounting in the aggregate to $50.70.

L. S. S. Farnsworth, of Upshur Co.,	2 shares		$33 80
Cyrus Hinkle,	do.,	1 share	16 90
J. J. Farnsworth,	do.,	1 share	16 90
J. E. Newlon,	do.,	1 share	16 90
J. A. Crislip,	do.,	1 share	16 90
Henry C. Koon,	do.,	1 share	16 90
Valentine Strader,	do.,	1 share	16 90
Jackman Cooper,	do.,	1 share	16 90
A. B. Clark,	do.,	1 share	16 90
D. D. T. Farnsworth,	do.,	1 share	16 90
W. S. Loudin,	do.,	1 share	16 90
T. P. Helphenstine,	do.,	1 share	16 90
W. H. Helphenstine,	do.,	1 share	16 90
L. A. Munks & M. S. Thomas, of Upshur Co.,		1 share	16 90
W. D. Farnsworth,	"	1 share	16 90
H. F. Westfall,	"	1 share	16 90
Watson Westfall,	"	1 share	16 90

The said H. F. Westfall, for his share, agrees to get up a report for the surveyor of lands to sign and draw up a deed for the clerk of the county court to execute to the said company, provided said tract of land is not redeemed.

Said Watson Westfall, in consideration of his share, agrees to show the corners of said survey, which adjoins a 60,000-acre survey made for Thomas Wilson, and the showing of the corners of the 60,000-acre survey shall be held to be sufficient to be a compliance upon the part of the said Watson Westfall, inasmuch as the 40,000-acre survey call- for to join the said 60,000-acre survey, both of which *was* surveyed for Thomas Wilson, in the county of Randolph, in the State of Virginia, and the said Westfall agrees to pay the surveyor of lands his fee for his report.

Now, the parties mutually agree with each other that any party living on said tract of land and have been in continuous possession

for ten years & having a deed for the same & paid all their taxes for the said ten years shall be entitled to hold their lands to the extent of their improvements.

Now, the parties do further agree that each party to this
37 contract shall be required to pay his ratable share of all taxes and other expenses that the company shall be liable for, including the taxes on said land for the year 1877, provided said company shall be entitled to a deed at the expiration of twelve (12) months, and if said land is redeemed each stockholder shall be entitled to the money vested, together with the accruing interest thereon. Now, any party failing to pay off his share of taxes or other liabilities for one year after the deed is obtained shall thereby forfeit his interest in said tract of land, and said interest shall vest in said company ratably if the company pay the delinquencys or such of them as shall pay off the said delinquency.

Now, shall any part of said survey be lost by prior claims or otherwise, then each party to lose ratably according to their respective interest. As soon as the- obtain a deed for said tract of land there shall be a meeting called of all the stockholders by H. F. Westfall & Watson Westfall or either of them, whose duty it shall be to give all the parties interested therein due notice that such deed is obtained and call a meeting of the stockholders within 30 days from the time of obtaining such deed and all parties interested
38 being herewith satisfied.

In testimony whereof — have hereunto set their hands and seals this day and year above written, the same being signed in duplicate.

GEORGE HENNING.	[SEAL.]
JOHN C. HENNING.	[SEAL.]
LEWIS A. MUNKS.	[SEAL.]
M. S. THOMAS.	[SEAL.]
D. D. T. FARNSWORTH.	[SEAL.]
J. EARL NEWLON.	[SEAL.]
A. B. CLARK.	[SEAL.]
HENRY C. KOON.	[SEAL.]
L. S. S. FARNSWORTH.	[SEAL.]
CYRUS HINKLE.	[SEAL.]
J. A. CRISLIP.	[SEAL.]
J. J. FARNSWORTH.	[SEAL.]
W. S. LOUDIN.	[SEAL.]
W. D. FARNSWORTH.	[SEAL.]
HENRY F. WESTFALL.	[SEAL.]
WATSON WESTFALL.	[SEAL.]
T. P. HELPHENSTINE.	[SEAL.]
W. H. HELPHENSTINE.	[SEAL.]
A. M. SMITH.	[SEAL.]
JACKMAN COOPER.	[SEAL.]
VALENTINE STRADER.	[SEAL.]

WEST VIRGINIA:

IN THE CLERK'S OFFICE OF UPSHUR
39 COUNTY COURT, *Feb'y 24th*, 1879.

Be it remembered that this day personally came before me, in my said office, A. B. Clark, L. S. S. Farnsworth, D. D. T. Farnsworth, J. J. Farnsworth, J. A. Crislip, Watson Westfall, J. E. Newlon, & Jackman Cooper, whose names are signed to the foregoing writing, bearing date Dec. 11th, 1877, and acknowledged the same to be their act & deed, whereupon said writing is this day duly admitted to record as to them.

Teste: C. C. F. McWHORTER, *Clerk*.

A copy.
Teste: C. C. F. McWHORTER, *Clerk*.

Endorsed as follows: George Henning & Co. Article of agreement. U. S. district c't. Joseph Duffner *vs.* D. D. T. Farnsworth & *al.* Exhibit "A" with bill. Filed Feb. 12th, 1886, 4.30
40 p. m. Test: Jasper Y. Moore, clerk. Clerk's fee for copy, $1.50; charged to Duffner, per order of Frame, att.

41 EXHIBIT "B" OF THE BILL.

This deed, made this 26th day of February, 1879, by C. C. F. McWhorter, clerk of the county court of the county of Upshur, in the State of West Virginia, of the first part, and George Henning, John C. Henning, Louis A. Munks, M. S. Thomas, D. D. T. Farnsworth, J. Earle Newlon, A. B. Clark, Henry C. Koon, L. S. S. Farnsworth, Cyrus Hinkle, J. A. Crislip, J. J. Farnsworth, W. S. Loudin, W. D. Farnsworth, Henry F. Westfall, T. P. Helphenstine, W. H. Helphenstine, A. M. Smith, Jackman Cooper, Valentine Strader, Philip Reger, & Solomon Day, of the second part. Whereas, in pursuance of the statute in such case made and provided, G. A. Newlon, deputy of
C. F. Ridgway, sheriff of said county, did, on the tenth day
42 of December, 1877, that being the first day of the term of the county court of said county, in that month of said year, commence to expose to public sale, at the door of the court-house of the said county, between the hours of ten in the morning and four in the afternoon, the real estate heretofore returned delinquent for the non-payment of the taxes due thereon in the said county of Upshur;

And whereas, at the sale so made as aforesaid, on the 12th day of December, 1877, the said sale having been continued in the manner prescribed by law to that day, the said George Henning, John C. Henning, Louis A. Munks, M. S. Thomas, D. D. T. Farnsworth, J. Earle Newlon, A. B. Clark, Henry C. Koon, L. S. S. Farnsworth, Cyrus Hinkle, J. A. Crislip, J. J. Farnsworth, W. S. Loudin, W. D. Farnsworth, Henry F. Westfall, T. P. Helphenstine, W. H. Helphenstine, A. M. Smith, Jackman Cooper, Valentine Strader, Philip Reger, and one Watson Westfall, who has duly assigned the benefit of his undivided interest in said purchase to the said Solomon Day, as appears by his assignment endorsed & properly acknowledged

on the said sheriff memorandum & receipt for said purchase,
43 hereto annexed, became the purchasers of a tract of land of 40,000 acres, the greater portion of which is situate in the said county of Upshur, but also extends into the counties of Randolph & Webster, which formerly belonged to & was returned delinquent in the name of William H. Morton for the non-payment of the taxes due thereon for the year 1876 for the sum of six hundred and forty-two dollars and twenty cents, that being the amount of taxes, interest, damages, commissions, & printer's fee for advertising, under sec. 3, chapt. 151, acts of 1872 & '73, due thereon at the time of said sale, including fee for receipts; and

Whereas more than one year has elapsed since the date of the said sale and the said real estate not having been redeemed as provided for by law;

And whereas, after the expiration of the said one year, to wit, on the 11th day of February, 1879, the said George Henning, John C. Henning, Louis A. Munks, M. S. Thomas, D. D. T. Farnsworth, J. Earle Newlon, A. B. Clark, Henry C. Koon, L. S. S. Farnsworth, Cyrus Hinkle, J. A. Crislip, J. J. Farnsworth, W. S. Loudin, W. D. Farnsworth, Henry F. Westfall, T. P. Helphenstine, W. H.
44 Helphenstine, A. M. Smith, Jackman Cooper, Valentine Strader, Philip Reger, & Solomon Day, in the manner prescribed by law, caused a report to be made to the clerk of the county court of the said county specifying the metes & bounds of the said tract of land so purchased as aforesaid, & giving such description thereof as is sufficient to identify the same, & there being no valid objection to said report, the same was on the 15th day of February, 1879, ordered by the said clerk to be recorded in his office, and a record thereof has been made accordingly; to which record now remaining in the office of the clerk of the county court of the said county of Upshur reference is here had:

Now, therefore, this indenture witnesseth: That — and in consideration of the premises the party of the first part has bargained and sold, and by these presents doth grant, bargain, sell, and convey, unto the party of the second part, their heirs and assigns forever, according to their respective interests therein, as may be seen by reference to a certain contract between purchasers named in the sheriff's
45 memorandum and receipt recorded in the clerk's office of Upshur county court in Deed Book "L," pages 499 & 500, the real estate aforesaid, situate in the counties aforesaid, on the waters of the Buckhannon river, & represented, as will appear by reference to said surveyor'- report & the records hereinafter refer-ed to, to be the same tract of land which was entered in the surveyor's office of Randolph county, Virginia, for Thomas Wilson by virtue of a part of a land-office treasury warrant, No. 1010, for 100,000 acres of land, dated December 23d, 1794, and surveyed March 20th, 1795, for said Thomas Wilson, and containing 40,000 acres after the reduction of 4,588 acres of prior claims and patented to Thomas Wilson on the 30th day of December, 1795, by Robert Brook, Esq., Governor of Virginia, which tract of 40,000 acres aforesaid was conveyed by said Thomas Wilson to James Swan by deed dated January first, 1796,

and recorded in Upshur county court clerk's office, in Deed Book "K," page 169, and conveyed by John Peter Dumas, trustee for the benefit of the creditors of James Swan, by August F. Requit, his attorney-in-fact, to George W. Howard by deed dated October 6th,
46 1840, & recorded in said office in Deed Book "K," pages 172 & '73, and also conveyed by said George W. Howard to William H. Morton by deed dated July first, 1873, & recorded in said office in said Deed Book "K," pages 174 & 175, which tract of land is bounded as follows:

Beginning at two sugar trees & running thence N. 40 E. 1,560 poles to a cherry tree, a corner to said 60,000-acre survey; thence with four of the lines of said 60,000-acre survey reversed north 2,080 poles to 2 sugars, N. 30 E. 660 poles to a maple; thence N. 60 E. 1,060 poles to a chestnut oak & birch; thence N. 30 E. 920 poles to a maple & chestnut oak; thence leaving said 60,000-acre survey & running N. 80 W. 2,820 poles to a sugar & white oak; thence a straight line to the beginning, containing forty thousand acres after the reduction of 4,588 acres of prior claims, be the same more or less; to have and to hold the said real estate, with its premises and appurtenances, unto the said George Henning, John C. Henning, Lewis A. Munks, M. S. Thomas, D. D. T. Farnsworth, J. Earle Newlon, A. B. Clark, Henry C. Koon, L. S. S. Farnsworth, Cyrus Hinkle,
J. A. Crislip, J. J. Farnsworth, W S. Loudin, W. D. Farns-
47 worth, Henry F. Westfall, T. P. Helphenstine, W. H. Helphenstine, A. M. Smith, Jackman Cooper, Valentine Strader, Philip Reger, & Solomon Day, their heirs or assigns forever.

Witness the following signatures & seals.

[SEAL.] C. C. F. McWHORTER,
Clerk of the County Court of Upshur County, West Virginia.

STATE OF WEST VIRGINIA, }
County of Upshur, } *ss:*

I, Watson Westfall, a notary public in & for the county aforesaid, do certify that this day personally came before me in my said county C. C. F. McWhorter, clerk of the county court of the county aforesaid, whose name as such clerk is signed to the foregoing writing bearing date February 26th, 1879, & acknowledged the same to be his act and deed as such clerk aforesaid.

Given under my hand this 27th day of February, 1879.

WATSON WESTFALL,
Notary Public.

WEST VIRGINIA:

IN THE CLERK'S OFFICE OF UPSHUR COUNTY COURT, *February 27th*, 1879.

Be it remembered that this deed, with the certificate of acknowledgment thereto annexed, was this day presented in
48 said office and duly admitted to record.

Teste: C. C. F. McWHORTER, *Clerk.*

A copy.
Teste: C. C. F. McWHORTER, *Clerk.*

Endorsed as follows: Clerk county court. Tax-title deed to George Henning & Co. U. S. district court. Joseph Duffner *vs.* D. D. T. Farnsworth & *al.* Exhibit "B." Filed Feb. 12th, 1886. Test: Jasper Y. Moore, clerk. Clerk's fee for copy, $1.50, charged to Duffner by order of Frame, atto.

49 EXHIBIT "C" OF THE BILL.

We, the undersigned, agree to and with George Henning & Co. and bind ourselves to do certain things (through and with the committee of said company, viz., D. D. T. Farnsworth, Jackman Cooper, & P. Thomas) as follows: We agree to pay to said committee fifteen thousand dollars for a certain tract of 40,000 acres of land, known as the Wm. H. Mortorn land, that was sold for non-payment of the taxes and bought by said George Henning & others, to whom the State of West Virginia made deed, &c., one hundred dollars of which sum in hand paid to said committee, two thousand dollars to be paid to said committee at the Buckhannon Bank on the 4th of May, 1883, the residue of said fifteen thousand dollars to be paid at the time of the making of a deed for said land, said deed to be made within forty days or as soon thereafter as possible. The deed shall convey all the rights and title to said land as conveyed by the State in a deed made to said company; the deed to be made to Joseph Duffner, Charles Duffner, and Mathew Duffner (the under-
49*a* signed) with the g-arentee that the said tract of land shall contain at least twenty thousand acres not legally held by actual settlers within the boundary of said tract of 40,000 acres; but in the making of the deed for said land it shall provide that all the actual settlers within boundary who have been in peacible possession for ten years according to law and have paid the taxes on their claim or title shall not be disturbed by any attempt in law from their bound-ries so held by deed or title; all the rest of said 40,000 acres is to be held by the undersigned. Now, if the said D. D. T. Farnsworth, Jackman Cooper, & P. Thomas shall make or cause to be made to us, the undersigned, a deed as above stated for said 40,000 acres we will faithfully perform our obligations herein made.

Witness our hands and seals this day and year of our Lord April 24th, 1883.

CHARLES DUFFNER. [SEAL.]
JOS. DUFNER. [SEAL.]
MATHEW DUFFNER. [SEAL.]

P. S.—We agree, also, to pay the taxes on said land for the year 1883.

49*b* EXHIBIT "D" OF THE BILL.

This deed, made this 12th day of May, in the year of our Lord one thousand eight hundred and eighty-three, between George Hen-

ning and Mary A., his wife; John C. Henning and Nette, his wife, of the county of Wyoming and State of Pennsylvania; Lewis A. Munks, of Baltimore city, State of Maryland; M. S. Thomas, of Lewis county; D. D. T. Farnsworth and Mary J., his wife; A. B. Clark and Mary A., his wife; Henry C. Koon; L. S. S. Farnsworth and Catharine, his wife; Cyrus Hinkle and Almira, his wife; John A. Crislip; W. D. Farnsworth and M. C., his wife, and Henry F. Westfall, of Upshur county; William C. McCormick and Sarah H., his wife, of Harrison county; William H. Helphenstine and Mary, his wife, of Barbour county; Alfred M. Smith and Eliza A., his wife, of Lewis county; Jackman Cooper and Matilda, his wife; Valentine Strader and Mary, his wife; Philip Reger and Susan A., his wife, of Upshur county, and all in the State of West Virginia, parties of the first part, and Charles Duffner, Joseph Duffner, and Mathew Duffner, of Cleveland, State of Ohio, parties of the second part, witnesseth:

That for and in consideration of the sum of fifteen thousand dollars, paid by the parties of the second part to the parties of the first part as follows, as per agreement, viz., one hundred dollars, paid on the 24th day of April, 1883; two thousand dollars, paid by a check or draft at the Buckhannon Bank on a Cleveland bank, dated May the 2nd, 1883, and the residue, twelve thousand and nine hundred dollars, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, the said parties of the first — do grant unto the said parties of the second part all
49c their rights, title, and interest vested in them by a deed of conveyance for a certain tract or survey of land, made in accordance with the statutes of the State of West Virginia. Said deed of conveyance was executed by the clerk of the county court of Upshur county, West Virginia, bearing date the 26th day of February, 1879, and recorded in the clerk's office of Upshur county court, in Deed Book "L," page 505, to which reference is here made. Said tract or survey of land is represented as lying and being situate on the waters of the Buckhannon river. The greater portion of said land is situated in said county of Upshur, but also extends into the counties of Randolph and Webster, and is bounded and described as follows: Beginning at two sugar trees and running thence N. 40° E. 1,560 poles to a cherry tree—a corner to a 60,000-acre survey of Thomas Wilson; thence, with four of the lines of the said 60,000-acre survey reversed, north 2,080 poles to two sugars, N. 30° E. 660 poles to a maple; thence N. 60° E. 1,060 poles to a chestnut oak and birch; thence N. 30° E. 920 poles to a maple & chestnut oak; thence, leaving said 60,000-acre survey and running N. 80° W. 2,820 poles to a sugar & white oak; thence a straight line to the beginning, containing 40,000 acres, after the reduction of 4,588 acres of prior claims, be the same more or less. The parties of the first part herein named conveys the above-named 40,000 acres of land to said parties of the second part herein named with the provisions that all of the actual settlers within the bound-

aries of said survey, who have been in peaceable pos-
49*d* session for ten years previous to this date, according to law, and, having paid all of the taxes on their claim of title to any of said land, shall not be disturbed by any attempt or action in law from their boundaries so held by them by deed as aforesaid; but all of the residue of said 40,000 acres is herein conveyed to the parties of the second part and held by them with the guarantee that said tract or survey of land shall contain at least 20,000 acres not legally held by actual settlers, as above named and provided for, within said boundary of 40,000 acres; but if in case the quantity of land in said survey should prove to be less than 20,000 acres after deducting the number of acres legally claimed & held by actual settlers, as above herein named, then the parties of the first part, grantors, who now constitute the legal owners of said tract of land which was sold for the non-payment of the taxes due thereon in the name of William H. Morton, are to refund back to the said Duffners, parties of the second part, in proportion per acre for any deficiency of land below or less than 20,000 acres in said survey. Each person composing the parties of the first part herein named, in case of any deficiency in the 20,000 acres as above guaranteed, shall refund back his proportional part of the purchase-money on account of any deficiency that may be found as aforesaid and in proportion to the number of shares herein conveyed by each one of the parties of the first part and no more, and the acceptance of this deed by the grantees herein is to be taken as evidence that they and each of them release each one of said grantors from
49*e* refunding any greater proportion or sum than that above provided—that is to say, that each one of the parties of the first part shall for himself and not for another be required to pay his own proportional part back for any deficiency that may be found in said survey reducing it to less than 20,000 acres. The parties of the first part and their respective interests and number of shares or acres held by each are as follows, viz.: George Henning & John C. Henning owns and conveys nineteen shares; Lewis A. Munks and M. S. Thomas conveys one share; D. T. T. Farnsworth conveys one share; A. B. Clark conveys one share; Henry C. Koon conveys one share; L. S. S. Farnsworth conveys four and one-half shares; Cyrus Hinkle conveys one share; John A. Crislip conveys one and one-half shares; W. D. Farnsworth conveys one share; Henry F. Westfall conveys one share; Wm. C. McCormick conveys one share; Wm. H. Helpenstine conveys one share; Alfred M. Smith conveys three shares; Jackman Cooper conveys one share; Valentine Strader & Philip Reger conveys one share, and the above-named parties of the first part also conveys one share once owned by Wm. S. Lowdin but forfeited by him to the others above named by failing to pay the taxes thereon as per contract between said parties, which contract is recorded in Deed Book "L," pages 499, 500, & 501. The parties of the second part are to pay all taxes on the above-named land or survey for the year 1883, as per agreement.

Witness the following signatures and seals the day and year above written.

M. S. THOMAS. [SEAL.]

49*f* LEWIS A. MUNKS,
By M. S. THOMAS, [SEAL.]
His Attorney-in-Fact.

GEORGE HENNING. [SEAL.]
MARY A. HENNING. [SEAL.]
J. C. HENNING. [SEAL.]
NETT HENNING. [SEAL.]
D. D. T. FARNSWORTH. [SEAL.]
MARY J. FARNSWORTH. [SEAL.]
VALENTINE STRADER. [SEAL.]
MARY STRADER. [SEAL.]
PHILIP REGER. [SEAL.]
SUSAN A. REGER. [SEAL.]
L. S. S. FARNSWORTH. [SEAL.]
CATHERINE FARNSWORTH. [SEAL.]
HENRY C. KOON. [SEAL.]
HENRY F. WESTFALL. [SEAL.]
W. D. FARNSWORTH. [SEAL.]
M. C. FARNSWORTH. [SEAL.]
W. H. HELPENSTINE. [SEAL.]
MRS. MARY HELPENSTINE. [SEAL.]
JACKMAN COOPER. [SEAL.]
MATILDA COOPER. [SEAL.]
A. B. CLARK. [SEAL.]
MARY A. CLARK. [SEAL.]
WM. C. McCORMICK. [SEAL.]
S. H. McCORMICK. [SEAL.]
J. A. CRISLIP. [SEAL.]
CYRUS HINKLE. [SEAL.]
ALMIRA HINKLE. [SEAL.]
A. M. SMITH. [SEAL.]
ELIZA A. SMITH. [SEAL.]

49*g* WEST VIRGINIA, *ss:*

IN UPSHUR COUNTY COURT CLERK'S OFFICE.

I, C. C. F. McWhorter, clerk of the court aforesaid, do certify that this day personally appeared beiore me, in my office aforesaid, J. C. Henning, D. D. T. Farnsworth & Mary J., his wife; Valentine Strader and Mary, his wife; Philip Reger & Susan A., his wife; L. S. S. Farnsworth & Catharine, his wife; Henry C. Koon, Henry F. Westfall, W. D. Farnsworth, M. C. Farnsworth, his wife; W. H. Helphenstine & Mary, his wife; Jackman Cooper and Matilda Cooper, his wife; A. B. Clark & Mary A., his wife; W. C. McCormick and Sarah, his wife, and John A. Crislip, whose names are signed to the foregoing writing, bearing date May 12th, 1883, and acknowledged the same to be their act and deed; and I further certify that they, the said Mary J. Farnsworth, Mary Strader, Susan A. Reger, Catharine

Farnsworth, M. C. Farnsworth, Mary H. Helphenstine, Matilda Cooper, Mary A. Clark, and S. H. McCormick, being each examined by me privily and apart from their husbands and having said writing fully explained to them, each acknowledged said writing to be their act, and declared that they had willingly executed the same and do not wish to retract it.

Given under my hand this 28th day of May, 1883.

C. C. F. McWHORTER, *Clerk.*

49*h* STATE OF WEST VIRGINIA, } *To wit:*
County of Upshur, }

I, C. C. F. McWhorter, clerk of the county court in & for said county, do certify that this day personally appeared before me, in my office aforesaid, M. S. Thomas, in his own right, as well as in his character as attorney-in-fact; Lewis A. Munks and also Cyrus Hinkle and Almira Hinkle, his wife, whose names are signed to the foregoing writing, bearing date May 12th, 1883, and acknowledged the same to be their act and deed; and she, the said Almira Hinkle, being examined by me privily and apart from her said husband and having said writing fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 5th day of June, 1883.

C. C. F. McWHORTER, *Clerk.*

WEST VIRGINIA, *ss:*

IN UPSHUR COUNTY COURT CLERK'S OFFICE.

I, C. C. F. McWhorter, clerk of the court aforesaid, do certify that this day personally appeared before me A. M. Smith and Eliza A. Smith, his wife, whose names are signed to the foregoing writing, bearing date May 12th, 1883, and acknowledged the same to be their act and deed; and she, the said Eliza A. Smith, being examined by me privily and apart from her said husband & having said writing fully explained to her, acknowledged the same to be her
49*i* act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand this 6th day of June, 1883.

C. C. F. McWHORTER, *Clerk.*

49*j* STATE OF PENNA., } *ss:*
Wyoming County, }

On the first day of June, A. D. 1883, before me, the subscriber, one of the justices of the peace in and for said county, personally appeared the above-named George Henning, Mary A. Henning, and Nett Henning, wife of J. C. Henning, and acknowledged the above indenture to be their acts and deed, and desired the same might be recorded as such; and the said Mary A. Henning and Nett Henning, being of full age and — by me examined separate and apart from their said husbands and the contents of the above deed being

by me made known to each of them, they each declared that she did voluntarily and of her own free will and accord sign, seal, and, as her act & deed, deliver the said indenture without any coercion or compulsion of her said husband.

Witness my hand and seal the day and the year aforesaid.

A. M. EASTMAN, [SEAL.]
Justice of the Peace.

STATE OF PENNSYLVANIA, *Wyoming County,* } *ss:*

I, Edwin Stephens, prothonotary of the court of common pleas of the county and State above named, the same being a court of record, do hereby certify that A. M. Eastman, Esq., whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking the same a justice of the peace of said county, duly commissioned and sworn, and authorized to take the same; that I am well acquainted with the handwriting of such justice and verily believe that his signature to the said certificate is genuine. Taken and acknowledged according to the laws of this State.

Seal Court of Common Pleas, Wyoming Co.

49*k*

In testimony whereof I have hereunto set my hand and affixed the seal of the said county and court, at Tunkhannock, the first day of June, 1883.

EDWIN STEPHENS,
Prothonotary.

WEST VIRGINIA:

In the Clerk's Office of the County Court of Upshur County.

JULY 14TH, 1883.

Be it remembered that this deed, with the certificates thereto annexed, was this day presented in said office and duly admitted to record.

Teste: C. C. F. McWHORTER, *Clerk.*

Endorsed as follows: George Henning & others to Charles Duffner, Joseph Duffner, & Mathew Duffner. Recorded in Deed Book P, pages 200 to 205, inclusive. Fees for recording, $2.50, paid. C. C. F. McWhorter, clerk.

EXHIBIT "F" OF THE BILL.

Thomas Wilson to James Swann. } Deed for 40,000 Acres after Deducting 4,588 of Prior Claims.

This indenture, made the first day of January, in the year one thousand seven hundred and ninety-six, between Thomas Wilson, party of the first part, and James Swann, of the city of Boston, party of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of one thousand dollars to him duly paid before the delivery hereof, hath bargained and sold, and by these presents doth grant and convey, to the said party of the second part, his heirs and assigns
50 forever, all that certain tract of land surveyed for Thomas Wilson in the county of Randolph and State of Virginia, lying on the waters of the Buckhannon river, adjoining lands of said Wilson, and bounded as follows, viz: Beginning at two sugar trees, thence N. 40′ E. 1,560 poles to a cherry tree, a corner of said Wilson's land, & with four of his lines N. 2,080 poles to two (2) sugar trees; thence N. 30′ W. 660 poles to a maple tree; thence N. 60″ E. 1,060 poles to a chestnut oak and birch tree; thence N. 30′ E. 920 poles to a maple tree; thence, leaving said line, N. 80″ W. 2,820 poles to a sugar tree and white-oak tree; thence with a straight line 5,680 poles to the beginning, containing 40,000 acres after deducting 4,588 acres of prior claims, with the appurtenances, and all the estate, title, and interest of the said party of the first part therein; and the said party of the first part doth hereby covenant and agree with the said party of the second part that at the time of the delivery hereof the said party of the first part was lawful owner of the premises above granted and seized thereof in fee simple absolute, and that he will warrant and defend the above-granted premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

51 THOMAS WILSON. [RED WASP.]

Sealed and delivered in the presence of—
MATHEW CLARKSON.
BENJAMIN R. MORGAN.

STATE OF PENNSYLVANIA, *Philadelphia,* } *ss:*

Personally appeared before me, Mathew Clarkson *Morgan*, of the city of Philadelphia, Thomas Wilson, within named and known to me to be the party who executed the within conveyance, dated this date, and who acknowledged the same to be his act and deed.

In witness whereof I have hereunto set my hand and caused the seal of the city aforesaid to be affixed this first day of January, one thousand seven hundred and ninety-six.

[SEAL.] MATTHEW CLARKSON *Morgan.*

STATE OF NEW YORK, *City and County of New York,* } *ss:*

I, Frederic Bull, a notary public, appointed by the Gove-nor of the State of New York, do hereby certify that I have this day carefully examined and compared the foregoing writing with the original conveyance thereof, and after such examination and com-
52 parison I further certify that the foregoing is a true and correct copy of said original deed acknowledged by Thomas

Wilson before Matthew Clarkson *Morgan*, of the city of Philadelphia, 1st January, 1796, and of the whole thereof, said deed bearing date the 1st January, 1796.

Given under my hand and official seal this twenty-fourth [s. s.] day of February, one thousand eight hundred and sixty-seven.

FREDERIC BULL,
Notary Public in the City of New York, in and for the State of New York.

WEST VIRGINIA:

IN THE CLERK'S OFFICE OF UPSHUR COUNTY COURT, *Feb'y 16th*, 1876.

Be it remembered that this deed and certificates thereto were this day presented in said office and duly admitted to record.

Teste: I. M. BENNETT, *Clerk.*

Power of Attorney.

Know all men by these presents that I, John Peter Dumas, trustee for the creditors of James Swann, have made, constituted, and
53 appointed, and by these presents do make, constitute, and appoint, August F. Requet my true and lawful attorney, for me and in my name, place, and stead, to sell, convey, and transfer all that certain tract of land surveyed for Thomas Wilson in Randolph county, State of Virginia, containing forty thousand acres, be the same more or less, lying on the waters of the Buckhannon river, adjoining lands of said Wilson, and bounded as follows, viz: Beginning at two sugar trees, thence north 40 degrees east 1,560 poles to a cherrry tree, a corner of said Wilson's lands, and with four of his lines north 2,080 poles to two sugar trees; thence north thirty degrees west 660 poles to a maple tree; thence north 60 degrees east 1,060 poles to a chestnut and birch tree; thence north 30 degrees east 920 poles to a maple tree; thence, leading said lines, N. eighty degrees west 2,820 poles to a sugar tree and white-oak tree; thence with a straight line five thousand and six hundred and eighty poles to the beginning, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or
54 could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal the fourth day of March, in the year one thousand eight hundred and thirty-nine.

JOHN PETER DUMAS, [SEAL.]
Trustee for Creditors of James Swann.

Sealed and delivered in the presence of—
JOSEPH STRONG.

STATE OF NEW YORK, } ss:
City & County of New York, }

Be it known that on the fourth day of March, one thousand eight hundred & thirty-nine, before me, Joseph Strong, a commissioner of deeds & notary public in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, personally came & appeared John Peter Dumas, to me personally known and known to me to be the same person described in and who executed the within power of attorney, bearing date the 4th of March, 1839, and acknowledged the within power of attorney to be his act and deed.

55 In witness whereof I have hereunto subscribed my name & affixed my seal of office this 4th day of March, 1839.

[SEAL.] JOSEPH STRONG,
Commissioner of Deeds & Notary Public, State of New York.

Be it known that on the twenty-fourth day of February, one thousand eight hundred and sixty-seven, before me, Frederick Bull, a notary public in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, personally came and appeared August F. Requet, who produced the power of attorney of which the within, on being duly compared, was found by me to be a true and correct copy of the power of attorney made by the attorney of the creditors of James Swann, John Peter Dumas, to me personally known and known to be the same person described in and who executed the within power of attorney, and who acknowledged the within power of attorney to be his act and deed as therein set forth.

[L. S.] 56 In testimony whereof I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

FREDERIC BULL,
Notary Public.

WEST VIRGINIA:

IN THE CLERK'S OFFICE OF UPSHUR COUNTY COURT, *February 16th*, 1876.

Be it remembered that this power of attorney and certificates thereto *was* this day presented in said office and duly admitted to record.

Teste: J. M. BENNETT, *Clerk.*

John Peter Dumas, Trustee, by August F. Requit, His Attorney-in-Fact, to George W. Howard. } Deed for 40,000 Acres, More or Less.

This indenture, made the sixth day of October, one thousand eight hundred and forty, between John Peter Dumas, trustee, for the benefit of James Swann, by August F. Requet, his attorney, parties of the

first part, and George W. Howard, of the city of Boston, Mass., party of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of four thousand dollars to him duly paid, hath sold, and by
57 these presents doth grant and convey, to the said party, his heirs and assigns, all that certain tract of land surveyed for Thomas Wilson in Randolph county, State of Virginia, containing forty thousand acres, be the same more or less, lying on the waters of the Buckhannon river, adjoining lands of said Wilson, and bounded as follows, viz: Beginning at two sugar trees, thence north 40 degrees east fifteen hundred and sixty poles (1,560) to a cherry tree, corner of said Wilson's land, and with four of his lines north two thousand eighty (2,080) poles to two sugar trees; thence north thirty degrees west six hundred and sixty (660) poles to a maple tree; thence north 60 degrees east ten hundred and sixty poles to a ches-nut oak and birch tree; thence north thirty degrees east nine hundred and twenty poles to a maple tree; thence, leaving said lines, north eighty degrees west twenty-eight hundred and twenty poles to a sugar tree and white-oak tree; thence with a straight line five thousand six hundred and eighty poles to the beginning, with the appurtenances, and all the estate, title, & interest therein of the said par*ties* of the first part; and the said John Peter Dumas, trustee, doth hereby covenant and agree to and with the said party
58 of the second part, his heirs and assigns, that the premises thus conveyed in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, *and* will forever warrant and defend against any person whomsoever lawfully claiming the same or any part thereof.

In witness whereof the party of the first part hath hereunto set his hand and seal the day and year first above *within*.

JOHN PETER DUMAS,
Trustee for the Creditors of James Swann,
By AUGUST F. REQUET,
His Attorney-in-Fact.

Sealed and delivered in the presence of—
JOSEPH STRONG.
WILLIAM D. MORGAN.

STATE OF NEW YORK, }
City — County of New York, } *ss:*

On this sixth day of October, in the year one thousand eight hundred and forty, before me, the subscriber, appeared August F. Requet, known to me to be attorney for John Peter Dumas, trustee for the creditors of James Swann and to me personally known to be the same person described in and who executed the within instrument, bearing date 6th October, 1840, and he acknowledged that he executed the same.

59 [Seal Notary Public.]

JOSEPH STRONG,
Notary Public, City & County of New York.

STATE OF NEW YORK, } ss:
City & County of New York, }

I, Frederick Bull, a notary public, appointed by the Gove-nor of the State of New York, do hereby certify that I have this day carefully examined and compared the foregoing writing with the original conveyance thereof, and after such examination and comparison I further certify that the foregoing is a true and correct copy of said original deed acknowledged by August F. Request (to me known to be the attorney-in-fact of John Peter Dumas) before Joseph Strong, notary public, on the 6th October, 1840, and of the whole thereof, said deed bearing date 6th October, 1840.

[L. S.] Given under my hand and official seal this 24th February, 1867.

FREDERIC BULL,
Notary Public in the City of New York,
in and for the State of New York.

WEST VIRGINIA:

IN THE CLERK'S OFFICE OF UPSHUR COUNTY COURT, *February 16th*, 1876.

60 Be it remembered that this deed and certificates thereto were this day presented in said office and duly admitted to record.

Teste: J. M. BENNETT, *Clerk.*

George W. Howard to William H. Morton. } Deed for 40,000 Acres.

This indenture, made the first day of July, in the year one thousand eight hundred and seventy-three, between George W. Howard, of the city, county, and State of New York, unmarried, party of the first part, and William H. Morton, of the same place, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one thousand dollars and exchange of property, — dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same, by these presents hath granted, bargained, sold,
61 aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part and to his heirs and assigns forever all that certain tract of forty thousand (40,000) acres of land lying in the county of Upshur and State of West Virginia, being the same tract of land surveyed for Thomas Wilson, formerly in Randolph county, by virture of a part of a land office treausry warrant of one hundred thousand acres, No. 1010,

dated the 23d of December, 1794, lying on waters of Buckhannon river, adjoining lands of said Wilson, and bounded as follows, viz: Beginning at two sugar trees, thence north forty degrees east fifteen hundred and sixty poles to a cherry tree, a corner of said Wilson's land, and with four of his lines north two thousand and eighty poles to two sugar trees; thence north thirty degrees west six hundred and sixty poles to a maple tree; thence north 60 degrees east ten hundred and sixty poles to a ches-nut oak and birch tree; thence north thirty degrees east nine hundred and twenty poles to a maple tree; thence, leading *with* said lines, north eighty degrees west twenty-eight hundred and twenty poles to a sugar tree and
62 white-oak tree; thence with a straight line fifty-six hundred & eighty poles to the beginning, containing forty thousand acres, together *will* all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder & remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and every part and parcel whereof, with the appurtenances; to have and to hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use, benefit, and behoof forever; and the said party of the first part, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said party of the first part, at the time of the sealing and delivery of these presents, is lawfully seized in his own right of the good, absolute, and indefeasable estate of
63 inheritance in fee simple of — in all and singular the above granted, bargained, and described premises, with the appurtenances, and hath good rightful power and lawful authority to grant, bargain, sell, and convey the same in manner and form aforesaid, and that the said party of the second part, his heirs and assigns, shall and may at all times thereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of first part, his heirs or assigns, or of any other persons or person lawfully claiming or to claim the same, and that the same now are free, clear, discharged, and unincumbered of and from all power and other grants, titles, charges, estates, judgments, taxes, assessments, and encumbrances of what nature and kind soever; and also that the said party of the first part and his heirs and all and every other person or persons whatsoever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore-granted premises by form, under or in trust for him, them, or either of them, shall and will, at any time or times
64 hereafter, upon the reasonable request and at the proper costs and charges in the law of the said party of the second part, his heirs and *and* assigns, make, do, and execute or cause or procure

to be made, done, and executed all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably desired, advised, or required; and the said party of the first part, his heirs, the above-described and hereby granted and released premises and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, against the said party of the first part, his heirs, and against all and every person or persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

65 GEORGE W. HOWARD. [SEAL.]

Sealed & delivered in presence of—
HENRY STRONG.
MARTIN HOWARD.

STATE OF NEW YORK, }
City & County of New York, } *ss:*

I, William V. Archer, a notary public of the city, county, and State of New York, duly commissioned and residing in the city of New York, certify that George W. Howard, whose name is signed to the writing within, bearing date the 1st day of July, 1873, has acknowledged the same before me in my State aforesaid.

Given under my hand & notarial seal this 1st day of July, A. D. 1873.

WM. V. ARCHER,
Notary Public, 40, *New York City & County, New York.*

WEST VIRGINIA:

IN THE CLERK'S OFFICE OF UPSHUR COUNTY COURT, *Feb'y 16th,* 1876.

Be it remembered that this deed and certificates thereto were this day presented in said office and duly admitted to record.

Teste: J. M. BENNETT, *Clerk.*

WEST VIRGINIA, *ss:*

66 IN UPSHUR COUNTY COURT CLERK'S OFFICE.

I, C. C. F. McWhorter, clerk of the court aforesaid, do certify that the foregoing are true copies from the records in my office aforesaid, as will appear by reference to Deed Book, letter "K," from pages 169 to 175, inclusive.

Given under my hand and official seal this 15th day of November, 1883.

[Seal Upshur County Court.]

C. C. F. McWHORTER,
Clerk Upshur County Court.

Endorsed as follows: U. S. dist. c't. Joseph Duffner *vs.* D. D. T. Farnsworth & *al.* Exhibit "F." Filed Feb. 12th, 1886. Test: Jasper Y. Moore, clerk.

67 *Answer of D. D. T. Farnsworth.*

And upon another day, to wit, on the 19th day of May, A. D. 1886, came the defendant Daniel D. T. Farnsworth, by his counsel, and filed his separate answer; which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The answer of D. D. T. Farnsworth to a bill filed in said court by Joseph Duffner against said respondent and others.

Respondent, saving the full benefit of all proper grounds of exceptions or objection to said bill as fully as if he had entered in a formal manner his demurrer thereto, and for grounds thereof, says that by the showing of the bill relief is sought because of alleged defect of title without any statement or allegation that complainant did not possess at hand the means of acquiring knowledge and information touching the title, and as to quantity alleged to be de-
68 ficient, &c., by the showing of the bill, if true, an action of covenant is the remedy in another forum.

Respondent, answering, says it is true there is a tract of land in the counties of Upshur, Webster, and Randolph known as the "Thomas Wilson survey," containing forty thousand acres, and respondent says the same was, on the 30th of December, 1795, granted by the Commonwealth of Virginia to Thomas Wilson, the land then being in the county of Randolph, and since the formation of the counties named is comprehended as stated in the bill; that the original survey for said Wilson was made the 20th of March, 1795. A certified copy of said grant is exhibited herewith as part of this answer, marked "Exhibit Y." It is true said tract of land being charged with taxes was, by the sheriff of Upshur county, returned delinquent for the non-payment of the taxes for the year 1876, charged to William H. Morton, and that it was advertised to be sold by the sheriff, but respondent has no recollection that it was advertised to be sold on the 10th of December, 1877. He has no recollection as to adjournment of sale. Being refreshed by the deed of the clerk to respondent and others, he believes it is true said land was sold on

the 12th day of December, 1877. Respondent was not pres-
69 ent at the sale. It is true the agreement marked "Exhibit A," filed with complainant's bill, was entered into by the parties thereto. Respondent does not know certainly when he signed said paper. He is certain, however, it was long after its date. His belief is it was about the time the period for redemption expired. He had nothing to do with getting up the contract and took no especial interest in the matter.

It is true the said tract of land was sold by the sheriff, as stated in the bill, and was purchased in the names of the parties to said agreement, as respondent believes, and he believes at the sum of $642.20 cents.

Respondent denies that at the time of making the said purchase, as afore stated, at sheriff's sale he was "acquainted with the previous history of the title of the said William H. Morton to the said tract of land or knew that Morton had no title to said land, and that they were acquiring none by said purchase," nor is it true that he was acquainted with any particular or other alleged vices in the title. He was informed that there was a grant to Thomas Wilson for said land, and he was informed that the Wilson survey was to be sold for taxes, and he was told, and so believed, said tract of
70 land for said year 1876 was not charged with taxes to different persons, but was only charged to one person. He only remembers that it was the Wilson survey that was to be sold for taxes. He only remembers this, and does not remember that Morton's name was mentioned. He certainly knew nothing of Morton or his title, and, being informed and believing the Wilson survey was only charged to one person for that year, he believed it was not material to know, in the matter of sales of lands for taxes, whether the person in whose name it was sold had title or not, unless the person having the title was charged also, and this was not so unless the person charged had. It is true C. C. McWhorter, clerk, did execute the deed as stated in the bill, and the same was recorded as therein stated.

Respondent denies that defendant Philip Thomas was ever joined with respondent in any conspiracy to defraud the plaintiff, nor does he believe that any such conspiracy was formed with any of the other defendants, and the charge so made in said bill is grossly false, without any foundation in truth. Respondent denies that said Thomas was ever one of a committee of three in fact, who were empowered by the owners of said land to represent and act for
71 them in the sale of said land. There never was any committee empowered to sell said land. It is true at one time some of the owners did solicit the complainant Jackman Cooper and Watson Westfall to receive offers of a sale of said land if opportunity should occur, but they had no power to sell or by contract to bind in any manner any of the owners, and were only solicited for that purpose because they were either residents of said county-seat and near thereto, the others being distant and the chief owners residents of other States. Respondent will hereafter, in a more appropriate con-

nection, show the relations of the said Philip Thomas to the subject-matter.

Respondent denies and repels the allegation that it was from the first the intention of the complainant to sell the land to whomsoever he or his associates could defraud into buying said land and deceive into believing the said title to be valid, and he denies that he at all times knew said title was utterly worthless, or that he, as one of the purchasers of said land from the sheriff, well knew the title was worthless, or, so knowing, that he, with his associates, conspired and associated with his copurchasers or codefendants to deceive into be-
lieving in the validity of said title or into purchasing the
72 same whomsoever they could deceive and defraud. No such charge of knowledge of invalidity of the title or conspiracy, whether applied to the parties collectively or severally, ever in any manner, in respect to said land, existed, and respondent denounces all these charges as groundless and false.

Respondent denies that in the latter part of April, 1883, he, the said Thomas and Cooper, or at any time, as a committee or otherwise, made any false and fraudulent representation to the complainant and said Mathew and Charles Duffner, or that said title was a valid and perfect title to said tract of land, or that the deed afterwards made to them would convey a valid and perfect title to said land, except such portions of the same as had been held by actual settlers, who had possession for more than ten years under a claim of title. They never represented anything in respect to the title to said Duffners or either of them other than to claim a tax title; that records were to be seen and could be examined, and positively declined to sell, assure, or warrant any other right or title than such as they had obtained under their purchase. Respondent believes there were some statements made expressing the opinion that there
was probably more than twenty thousand acres which had
73 not been held by settlers for more than ten years, and although this was understood as the expression of an opinion only, still respondent believes it is true, but there was only to be an assurance that there should be at least twenty thousand acres not so occupied.

It is not true that respondent nor does he believe it is true that he or his associates ever used any means, fraudulently or otherwise, to prevent the complainant, said Charles and Mathew Duffner, or either of them, from obtaining from other sources information with reference to the title to said land either as to its validity or invalidity. Respondent will here state that he has recently learned that before said purchase by said Duffners and again before the completion of the contract the complainant was warned that it was a tax title, and that he should have it investigated, and respondent, at all times, invited investigation of it before the completion of the sale.

It is not true that respondent or his associates ever induced the said Duffners or either of them to make a troublesome and expensive journey to view and inspect the said tract of land to ascertain whether it suited them in its physical features, nor is it true that

respondent or his co-owners knew that said Duffners, in the
74 event they purchased, "never would be able to acquire the possession of any part of said land." Respondent denies either that he made or that in order to induce the complainant to accept and confide in any representations as to validity of said title, or in order to prevent the complainant from making inquiry in other directions respecting the same, that he at the time it is falsely alleged he made them also represented that he had been Governor, was president of a railroad company, member of senate, president of a bank, and member of the Baptist Church. Respondent, at the expense of what may be characterized as innocent vanity, has this to say in respect thereto. After said contract was completed, either on the same day or the next, and after the said complainant-, Charles and Mathew Duffner, had signed the contract expressed in "Exhibit C" with bill, and said Duffners had kept one copy and respondent the other, and the contract, as far as it could be, had been closed, the complainant invited respondent to take a walk with him over the town of Buckhannon, and said complainant inquired of respondent about the history of the formation and organization of the State of West Virginia, and thereupon respondent imparted to him such
75 information about it as he could, and incidentally mentioned that by events in its early history he became the Governor for some seven days; at the same time it was mentioned in like manner, incidentally, that in the early history of the State he had been a member of the senate. Continuing this walk, they passed by the Baptist Church, and, the complainant inquiring what house it was, respondent informed him what denomination had built it, and then complainant asked him what denomination he belonged to, and then respondent informed him he was a Baptist, and probably remarked that he had helped to build the church. Complainant then said he was a Catholic. Continuing the walk, they passed the banking-house, and some conversation occurring of an inquiring character by said complainant, it may have been mentioned by respondent that he was president of the bank. It is not true that respondent stated to said Duffner "that he was not such a man as would deceive or take advantage of the complainant, or would have anything to do with titles to land unless they were good titles." However truly such statements might have been made, it is not true that they were made. The above narrative is given to explain that
76 which is distorted and employed to produce a false impression and for a purpose by complainant. It is not true that he stated he was president of railroad company. It is not true that any representations were falsely or fraudulently made to induce the making of the said contract of the 24th of April, 1883. It is not true that either the respondent or any other owners of the land were bound by said written contract of the 24th of April, 1883. It was not a contract, as respondent is advised and believes, binding any of the owners, as it was only signed by the Duffners. It was an offer of theirs to give fifteen thousand dollars for such title as the owners had acquired by said tax deed. It is not true that the price agreed on was twenty thousand dollars. It is not

true that respondent represented that he, or that he and Thomas, or that what is called a committee were entitled to $5,000, nor was the same in any manner set apart for their services out of proposed purchased-money. Twenty thousand was talked of, but doubts were expressed as to obtaining a deed, as the said Duffners only wished to pay half down. Then fifteen thousand was proposed to be paid in cash then and when deed was made. The Duffners, and especially the complainant, who was in fact the actor and negotiator,
77 became greatly and earnestly interested to get a deed to be executed by the owners, well knowing they were not bound to convey, they not having consented or agreed to the contract and in no manner bound to convey. The said Thomas stated to said Duffners that he had no interest in the land, but his old acquaintances in Pennsylvania, the Hennings, owned nineteen-fortieths of the land, and that they had asked him about the land and wished him to give it some attention, he having recently before removed from Pennsylvania to Randolph county, and that he had considerable trouble and had incurred some expenses about it and could not afford to help to get a deed unless he was paid for it, and could only help to get deed. It was only because said Thomas was taking an interest for Hennings that his name was mentioned in said contract, and this said Duffners knew. Then while respondent was writing contract the said Thomas and Duffners step-ed aside and had some conversation, in German, which respondent did not understand. When they returned the said Thomas informed respondent that they had proposed to him to give him $6,500 to procure the deed from the owners, and he proposed to respondent, as he would be unable to secure the deed, that if respondent
78 would co-operate with him to get the deed that they would divide equally the $6,500. The respondent then inquired of said Duffners if they had so agreed, and they stated that was the agreement, and they were *they were* asked if they were willing to execute a writing to that effect, and after the writing "Exhibit C" was made the agreement in writing to pay the $6,500 as afore stated was signed by the Duffners.

It is not true that said respondent or respondent and said Thomas at any time represented to said Duffners or either of them that they were entitled to receive five thousand dollars and the other owners to receive the remaining fifteen thousand dollars.

The whole understanding was as afore stated, and the proposi ion to pay the $6,500 to procure the deed was an independent proposition, made and concurred in by said Duffners in order to secure the deed.

It is true the two payments of $100 and $2,000 were made as stated in the bill, or about the time stated, as to the $2,000. It is true in the month of July, 1883, the complainant and a certain Charles L. Fish, an attorney of Cleveland, of good repute, standing, and experience in his profession, did visit the town of Buckhannon to
79 investigate the title to said land, and then the whole amount so proposed by said Duffners, being practically unpaid thereon

here, as part of this answer to that part of the bill relating to said visit of complainant and said Fish, to make a statement of facts and circumstances just preceding said visit. In the month of May, 1883, respondent received from complainant several letters of the dates of 11th, 18th, and 30th of that month to the effect that his associate purchasers, Charles and Mathew Duffner, were unable to pay any part of the purchase-money, and that he did not want to deprive his associates of anything they anticipated or hoped in the "venture," but that he ought to "hold the reins until they shouldered a just proportion of the burthen," and he insisted on having the deed made to him alone. This respondent regarded as contrary to the provisions of alleged contract, and he and some of the owners to whom he talked were unwilling to so make the deed, and respondent, in substance, so informed the complainant, and after respondent received the letter of the 30th May, 1883, the said complainant still insisting to have the deed made to him alone, the respondent went to Cleveland to see the complainant on the subject. Respondent, in the office of said Fish, the said Fish and said complainant being
80 present, informed them that the deed could not be obtained to complainant alone, but that his brother and son, the said Charles & Mathew, could, if made to the three, convey their interest to complainant, and so that seemed to be satisfactory to complainant. The complainant then made a further objection to the effect that he had sent to respondent $2,000, and he had no assurance that he would get the deed, and if not, then he might lose the $2,000. Respondent, having received a draft for the $2,000, promptly assured the complainant that if the deed was not obtained he would be responsible for the return of $2,000 to him, and this was accepted by complainant as entirely satisfactory. The arrangement was then made that if deed was obtained respondent was to notify complainant, so that he, with his counsel, could visit Buckhannon and examine the records touching the title, tax sale, the deed, &c., &c. Respondent, after the deed was ready for delivery, on the 7th day of June, 1883, wrote to complainant he had the deed. Some time after this, in the month of July, 1883, the said complainant and his attorney visited Buckhannon for the purpose aforesaid, and the said Fish, as attorney for the complainant, was engaged some three days in the investigation of the title by the records in the clerk's
81 office, and the said Fish, at the conclusion of his investigation, declared to said complainant that he had found everything in regard to the land as these gentlemen (refer-ing to the vendors or some of them) had represented, and informed complainant he could pay over the money. The deed was read and carefully examined as to all its provisions and accepted after being commented on. Respondent will here state that upon the occasion of his said interview at Cleveland with complainant and his said attorney he invited, solicited, and urged the said complainant and his said attorney to visit Buckhannon and investigate the title before the closing up of the contract.

Respondent denies that he represented to the complainant "that

...y unreliable." Respondent is not informed of the extent of the reliance of complainant in the attorney he selected, but he is informed and believes it to be true that before the contract was closed and before the money was paid that complainant was advised to have the title investigated by counsel familiar with such subjects, and complainant declined to do so, stating his said selected
82 counsel was well informed about such matters, and that he would have him to investigate the title, and should rely on his investigation. Respondent denies that he, by any representations to said attorney or complainant, induced the said attorney and complainant to believe anything in respect to the title. The attorney was furnished with the means by the records and statutes touching tax sales, and all information that respondent had touching the title was at hand and examined, and said attorney was urged by respondent and others in interest then present to make full and satisfactory investigation; and he denies that "he used any means to prevent the complainant and his attorney from enquiring about the title," nor does he believe that any of his associates used any such means or ever entertained such a purpose.

Respondent admits that when the deed was delivered to the complainant he did complete the payment of said fifteen thousand dollars, and the same was distributed to the grantors in said deed according to their several respective interests in said land. Respondent denies that he represented to complainant that some of the other persons interested in said tract of land were dissatisfied with
83 the sale to the complainant or were unwilling to sign a deed to him, or that it would require peculiar efforts to induce the other persons in interest to execute a deed, and that he should pay them for such services fifteen hundred dollars. It was talked of, after said contract was agreed to, that some might object to a sale at fifteen thousand dollars, for it was at that time known that a much larger price had at different times before that been asked by the owners for it; nor was the $1,500 agreed to be given to procure the deed, but $6,500 was the amount proposed by complainant and said Charles and Mathew Duffner, and then it was that said Duffners signed an agreement in writing to pay to respondent and said Thomas the sum of $6,500 if the deed was obtained, and if not, they were not to pay any part thereof. Respondent will here state that at the time of his said visit to Cleveland he demanded of said complainant—as his associates, his brother and son, were to have no further interest in the land—a note for $3,250 *dollars* for his services in procuring the deed, and he gave to said complainant a bond for $3,250, with condition to indemnify against the obligation to pay him anything on account of said note if he failed to get the deed, and said complainant at the same time made his obliga-
84 tion and written agreement to said Thomas and sent it to him for $3,250, but to this obligation was a condition that it was not to be paid unless said deed was made. This new contract, as a compensation for obtaining the deed, was because Mathew and Charles Duffner were to be no longer bound for the $6,500, and it became a separate transaction as to that between complainant and

respondent and between complainant and said Thomas. Respondent further states that it is not true that said complainant paid in discharge of said separate sums of $3,250, each, to respondent and Thomas together, the alleged sum of five thousand eight hundred dollars. Respondent says that when complainant received the said deed, in July, 1883, the said Thomas went immediately thereafter with complainant to Cleveland, and he is informed and believes the said complainant satisfied the said separate obligation to said Thomas; and thereafter the complainant soliciting an abatement by payment before the maturity of the note of $3,250, and respondent did agree, if paid, to take $2,800, and complainant did, in July,
85 1883, or about that time, send his said note to Wick's Bank, in Cleveland, as requested by complainant, for payment of the $2,800, but it was not paid until in November, 1883, a short time before its maturity. It is not true that respondent advised the agent referred to in the bill to allow said land to remain uncleared for ten years. He did advise said agent that he should go first and call the settlers together and see and learn the parts not occupied and to secure the parts which were unoccupied by the settlers, and especially so as the lumber trade was then depressed; and after the conversation referred to with said agent, who was son-in-law of the complainant, he enquired of respondent if he would still accept the $2,800 in payment of said note, the same still being in said bank at Cleveland, and, being informed that he would, the said agent communicated with complainant and, although he was "alarmed," paid the said $2,800.

Respondent will here state that said complainant visited said land some time in August, in the year 1883; went on the land with others and tried to sell said land, and on his return expressed great satisfaction with his purchase, and repeatedly, after he made said purchase, and again after he obtained a deed, he expressed the be-
86 lief that he would make a great speculation in it. Possibly his disappointment in not being able to find a purchaser is the occasion of the present clamor in his bill. Certain it is that, being so disappointed in finding a purchaser, he has made no proper effort to get and hold the vast extent of unoccupied land within the boundaries of his deed.

Respondent does not admit the said deed to complainant, and said Charles and Mathew Duffner conveyed no title whatever. They only undertook to convey such title as they received by the deed to them, and this was well understood by complainant, and respondent denies that he and his associates well knew when said conveyance by them was made it was worthless or consideration for which the purchase-money was paid wholly failed, and he denies that he ever made any representations in respect to said land or the titles thereto which he knew to be false, and no representations of any kind, other than as to matters which are of record, open alike to all the parties for investigation.

Respondent, in answer to that part of the bill which alleges "there were not at the time of the making of said alleged contract of the

24th of April, 1883, or at any subsequent period, so much as
87 twenty thousand acres of said tract which had not been held for ten years by actual settlers with claim of title," says the said tract of land did then and since contain at least twenty thousand acres not legally held by actual settlers within the boundaries of said tract of 40,000 acres, as respondent is informed and believes, but all the representations in respect thereto were the expressions of mere opinions in respect to a matter alike within the knowledge of the contracting parties, and especially within the reach of said Duffners, as they, before the 24th of April, 1883, with their selected surveyor, visited said land, examined boundaries, and then learned as a fact that conjectural opinions as to probable quantity of unoccupied land were substantially true, and, furthermore, this is a subject within the assurance or guarantee of the deed and the grantors are bound thereby as expressed therein.

Respondent is not advised of the expenditures set out and alleged in the bill by the complainant, and, if true, they were not made in consequence of any representations made by respondent or the grantors of said deed. The complainant had every means of knowledge that
88 defendants had touching the title, did avail*ed* himself of such means, and did have investigations made, and respondent believes now if complainant had made any reasonable efforts to take possession of and to hold said land he would to-day have been substantially enjoying the substance of that which he so contracted for, but, being disappointed by not being able to speculate on others, he, by false statements and allegations of fraud and deceit against respondent and others, seeks to undo a contract brought about by himself, without invitation or solicitation of any of the parties to his bill.

It is not true that it was notorious in Upshur county that the title to said land was invalid or worthless at the time of making said alleged contract in April, 1883, or at any other time, nor is it true that respondent, by any efforts or means, kept or tried to keep any knowledge which complainant might have learned by inquiry or otherwise from him; upon the contrary, the said complainant did, before said contract, go on said land, did make inquiry as to title of others, and then and afterwards, before he paid for said land, he was informed, as he was to get only such title as the owners had under a tax deed, that he had better investigate.

89 Respondent denies that the said deed by the clerk to George C. Henning and others was wholly void. He insists there was a record made by the clerk in his office of the report of sale, and by that record it is shown that the record was made on the 22nd day of December, 1877, being the day said list was sworn to and returned, and, the sale as stated in the bill having been made on the 12th day of December, the return and record was in time. The return was made, and the following record appears to have been made on the day of the return by the clerk :

"A true copy from the original list, as returned to me by said sheriff, this 22nd day of December, 1877.

Teste: C. C. McWHORTER,
Clerk Upshur County."

All which appears by a duly certified copy of said record of said sale, return, certificates of clerk, exhibited with this answer as a part thereof, marked "Exhibit Z."

Respondent, answering that part of the bill touching the alleged insufficiency of the paper title of Wm. H. Morton or as to purport or character of the same, says that he at no time made representations to said Duffners nor to either of them about them, and did
90 not, until some time after the 24th of April, 1883, know anything about them. He did not until some time thereafter hear that said Morton's deed was deficient, but he paid but little attention to the subject, because, as he has stated heretofore, he did know that the tract of land so granted to Thomas Wilson in the year 1795—not in 1875, as stated in bill—was not charged on the land-tax books with taxes for the year 1876 to any person other than the said Morton or to any other person who might have title, and having been returned delinquent for said taxes and sold for the same he considered that it made no difference whether Morton had title or not. In such conclusion he is informed and so believes he is vindicated. See sec. 25, ch. 117, Acts of 1872-'3.

Respondent was no lawyer, and he could only judge as best he could. Respondent will here state that before the said complainant completed his payment, as stated in the bill, and at the time the said title was being investigated in the clerk's office of Upshur county by the said Charles L. Fish, the attorney aforesaid of said complainant, he either discovered the deficiencies in the papers of the title to said Morton or his attention was called to them
91 and they were carefully examined by said Fish, and he spoke of the deficiencies mentioned in the bill, and then called for the assessor's books and the laws of this State relating to sales of lands for taxes and obtained and examined them, and remarked that our laws in respect to the subject were substantially in this respect the same as in the State of Ohio, and *and* that being charged with taxes only to said Morton it made no difference as to his title.

Respondent does not admit that said tract of land is owned by other person, though, be this as it may, he made no representations touching any supposed conflict of other titles which may interfere, for as to the tract in question such interferences are known to exist in every part of the State west of the Alleghany Mountains. He does not now know as to such interferences as are alleged in the bill. As to the grant to Bond for 69,473½ acres alleged to have issued in 1875, if so issued it is some 80 years younger than the grant to Wilson. If the grant referred to, to Bond, was issued before or since no man living can show or find a line or corner to identify the same, and after fruitless efforts, continued for more than fifty years, to find and locate the same they have failed, and it has been abandond, and if
92 found it has long since been forfeited, and the forfeited title passed by deed to Hennings, respondent, and others. As to the Welsh survey, respondent is informed now that it only interferes by its boundaries, if they can be found, to a comparatively small extent, and that the grant therefor is what is called an inclusive survey, excluding from its operation older rights; that both

the entry and survey of the Thomas Wilson land is older than that of the supposed interfering Welch land, and therefore there was no grant to Welsh of any part of the Wilson land, as respondent is informed and believes, and, again, the Welsh land had, long prior to 1883, been forfeited. As to the other alleged or supposed interferences mentioned in the bill of other grants, respondent has no information about them and never knew of the location of them. He is informed now and so believes that as to those of them he has been able to learn of he has recently been informed that they do not touch the land in question; and his further information now is and he so believes that all of them were, long prior to April, 1883, forfeited to the State. Respondent does not admit, but denies, that the
93 alleged interfering grants were matters of notoriety in the community in which respondent, said Thomas and Cooper, and the other defendants lived or were well known to all the grantors in the deed to said Duffners.

Respondent here again denying all the allegations of fraudulent and alleged false misrepresentations in said bill contained, either as to himself or his cograntors, and denying all liabilities by reason of the said alleged false charges and imputations, and not deeming it necessary to vindicate the title so conveyed to said Duffners otherwise than according to the provisions of the deed and to repel all inferences that the respondent or his cograntors at any time knew or believed that their title was worthless, he will here state certain facts in respect thereto not in any manner referred to by said bill.

Respondent here states that said tract of land so granted to said Thomas Wilson was charged on the land-tax books for said Upshur county to the said Thomas Wilson, the patentee, with taxes thereon for the year 1874, and was returned delinquent therefor and thereafter sold at a tax sale therefor in the year 1875, and was bought by the State of West Virginia, and was not in any manner
94 redeemed, and prior to April, 1883, had become forfeited; that said tract of land was not for said year 1874 charged on said books to any other person, and, the title remaining in the State, on the 12th day of December, 1877, *when* it was purchased by respondent and others, and by the deed of the clerk to them they obtained the title of the said Thomas Wilson, the title of the State by the forfeiture thereof as aforesaid, and other titles forfeited to the State, whether of alleged interfering forfeited titles or others (Acts of 1871, ch. 194, page 247). Respondent will file herewith the certificate of the clerk touching the charge of taxes to Thomas Wilson, the sale, &c., as part of this answer. Respondent and his cograntors not only in good faith paid the $642.20, the amount of tax sale, but thereafter they paid the taxes, amounting to thousands of dollars.

Respondent will here state, as a fact not in any manner alluded to in the bill, that he nor his cograntors, as far as he knows, neither invited said Duffners to purchase *and* did not know that said Duffners wished to purchase the said land until they visited the town of Buckhannon to look it up in company with a man named
95 Wood, and respondent did not know and had never heard of

either said Duffners or said Wood; that said Duffners selected a surveyor and went over said land, and upon their return for the first time approached respondent and proposed to purchase the land and did so propose to purchase as afore stated. All this was done with a full and perfect understanding that it was only of such title, if it could be obtained, as afore stated, as had been obtained by said tax sale. All this was done without any representations about the matter, except that respondent and his cograntors claimed only a tax deed. Then and after this and before payment for same the said Duffners had the same opportunities and means of information touching the title that respondent and his cograntors had and long months after said transaction, in April, 1883, had intervened and before payment and deed were made.

Respondent denies all fraud and conspiracies and misrepresentations, deceptions, and deceits charged and imputed in said bill, and denies the right to the relief prayed for in said bill; and, having fully answered, prays to be hence dismissed with his costs unjustly imposed.

96 D. D. T. FARNSWORTH.

JNO. BRANNON,
Counselor for Respondent.

STATE OF WEST VIRGINIA, *Lewis County,* } *To wit:*

D. D. T. Farnsworth, respondent named in the foregoing answer, on his oath says that the facts and allegations therein contained are true except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information he believes them to be true.

D. D. T. FARNSWORTH, *Defendant.*

Taken, sworn to, and subscribed before me, a notary public, of said county, this 14th day of May, 1886.

Given under my hand and official seal this 14th day of May, 1886.

[Seal Wm. L. Dunnington, Notary Public, Lewis Co., W. Va.]

W. M. L. DUNNINGTON,
Notary Public.

97 Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth & others. Answer of D. D. T. Farnsworth Filed May 19th, 1886. Test: Jasper Y. Moore, clerk D. C. U. S., D. W. Va.

98 EXHIBIT Z WITH ANSWER.

Thomas Wilson, 40,000 acres, Randolph.

Robert Brooke, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that by virtue of a land office treasury warrant, No. 1010, issued the 23rd day of December, 1794, there is granted by the said

Commonwealth unto Thomas Wilson, assignee of Benjamin R. Morgan, assignee of said Wilson, a certain tract or parcel of land, containing forty thousand acres by survey bearing date the 20th day of March, 1795, lying & being in the county of Randolph, on Buckhannon river, adjoining the lands of said Wilson, & is bounded a- followeth, to wit: Beginning at two sugar trees, thence N. 40° E. 1,560 poles to a cherry tree, corner of said Wilson's land, & with four of his lines north 2,080 poles to two sugar trees; thence N. 30° W. 660 poles to a maple tree; thence N. 60° E. 1,060 poles to a chestnut oak & birch tree; thence N. 30° E. 920 poles to a
99 maple tree; thence, leaving said lines, N. 80° W. 2,820 poles to a sugar tree & white-oak tree; thence with a straight line 5,680 poles to the beginning; but it is always to be understood that the survey upon which this grant is founded includes 4,588 acres, exclusive of the above quant'y of 40,000 acres, which having a preference by law to the warrants & rights upon which this grant is founded liberty is reserved that the same shall be firm & valid and may be carried into grant or grants, & this grant shall be no bar, in either law or equity, to the confirmation of the title or titles to the same, as before mentioned & reserved, with its appurtenances; to have & to hold the said tract or parcel of land, with its appurtenances, to the said Thomas Wilson (except as before excepted) and his heirs forever.

In witness whereof the said Robert Brooke, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand & caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 30th day of December, in the year of our Lord one thousand seven hundred & ninety-five, and of the Commonwelth the twentieth.

ROBERT BROOKE.

100 LAND OFFICE, RICHMOND, VIRGINIA.

I hereby certify the foregoing to be a true copy from the records, as witness my hand & seal of office this 7th day of June, 1884.

[Land Office Official Seal of Virginia.]

J. A. WRINGFIELD,
Reg. Land Office.

Endorsed as follows: Exhibit Z with answer.

101 EXHIBIT G TO ANS. OF D. D. T. FARNSWORTH.

Memorandum of real estate within the county of Upshur sold this twelfth day of December, eighteen hundred and seventy-seven, for the non-payment of taxes thereon for the years 1875 and 1876.

Name of person charged with taxes: Wm. H. Morton.
Quantity of land charged: 40,000.
Estate held therein: F. S.
Local descriptions of land: Waters of Buckhannon river.

Amount of taxes due thereon for State & school purposes, including interest, damages, & commissions:

For the year 1875: ——.
For the year 1876: $143.83.

Amount of county tax due thereon, including same:

For the year 1875: ——.
For the year 1876: $159.80.

Amount of district or independent district taxes due thereon, including same:

For the year 1875: ——.
For the year 1876: $273.28.

Quantity of land sold: 40,000.

Names of purchasers: George Henning, John C. Henning, Lewis A. Munks, M. S. Thomas, D. D. T. Farnsworth, J. Earl Newlon, A. B. Clark, Henry C. Koon, L. S. S. Farnsworth, Cyrus Hinkle, J. A. Crislip, J. J. Farnsworth, W. S. Loudin, W. D. Farnsworth, Henry F. Westfall, Watson Westfall, T. P. Helphenstine, W. H. Helphenstine, A. M. Smith, Jackman Cooper, Valentine Strader, Phillip Reger.

Amount of purchase money paid, including interest, damages, commissions, and fee for receipt	$576 91
Sheriff's commissions	28 84
Fee for this receipt	25
Expenses for advertising, &c., attending sale of this land	36 20
Total	$642 20

102 Received of Geo. Henning & John C. Henning the one-half of the above sum of six hundred and forty-two dollars and twenty cents, for which I have this day executed to them a separate receipt therefor, and also received of the other above-named purchasers the sum of three hundred and twenty-one dollars and ten cents, it being the balance of the whole amount paid by them for the purchase of the land mentioned in the above memorandum and the fee for this receipt.

G. A. NEWLON, *D. S.*,
For C. F. RIDGWAY, *S., U. C.*

I assign the benefit of my purchase and interest in the within purchase to Solomon Day and direct that the clerk of the county court of Upshur execute a deed for my interest in the foregoing purchase of land to said Day.

Given under my hand this first day of February, 1879.

WATSON WESTFALL.

Atteste: R. M. MANLY.

WEST VIRGINIA, } ss:
Upshur County, }

Personally appeared before me in my office this day Watson Westfall, whose name is signed to the foregoing writing, bear-
103 ing date February first, 1879, and acknowledged the same to be his act and deed.

Given under my hand this 3d day of February, 1879.

C. C. F. McWHORTER,
Clerk Upshur County Court.

WEST VIRGINIA:

IN THE CLERK'S OFFICE OF UPSHUR COUNTY COURT, *February 15th*, 1879.

The foregoing plat & report, made by John W. Wilson, surveyor of lands for said county, dated February 11th, 1879, was this day filed in said office and the same examined by me, and it appearing that the discription therein given is sufficient to identify the land therein described, and there appearing no valid objection to said report, it is therefore confirmed and ordered that said report be recorded.

Test: C. C. F. McWHORTER, *Clerk.*

A copy.
Teste: C. C. F. McWHORTER,
Clerk Upshur County Court.

104 I, G. A. Newlon, deputy sheriff (collector), deputy for C. F. Ridgway, sheriff of the county of Upshur, do swear that the above list contains a true account of all the real estate within my county which has been sold by me to individuals during the present year for the non-payment of taxes thereon for the years 1875 and 1876, and that I am not directly or indirectly interested in the purchase of any of said real estate.

G. A. NEWLON, *D. Sheriff.*

Sworn & subscribed to before me this 22nd day of December, 1877.

C. C. F. McWHORTER, *Clerk.*

A true copy from the original list as returned to me by said sheriff this 22d day of December, 1877.

Teste: C. C. F. McWHORTER,
Clerk Upshur County Court.

I hereby certify that the foregoing list was entered of record and certified to the auditor of State in the manner & form and within the time prescribed by law this 10th Jan'y, 1878.

Teste: C. C. F. McWHORTER,
Clerk Upshur County Court.

WEST VIRGINIA, *ss:*

IN UPSHUR COUNTY COURT CLERK'S OFFICE.

105 I, C. C. F. McWhorter, clerk of the court aforesaid, do certify that the foregoing are true copies of the affidavit, certificate, and notes or memorandums appended at the foot of the record of the list of sales of delinquent lands made by the sheriff of Upshur county on the 10 & 12th days of Dec., 1877, in my care and custody in said office.

Given under my hand this 9th day of April, 1885.

C. C. F. McWHORTER, *Clerk.*

Endorsed as follows: Clerk of the county court of Upshur county. Certificate. Exhibit G. See acts 1872–'3, chapt. 117, section 14, page 314.

106 WEST VIRGINIA, *ss:*

IN UPSHUR COUNTY COURT CLERK'S OFFICE.

I, C. C. F. McWhorter, clerk of the court aforesaid, do certify that a certain tract of 40,000 acres of land situated in Washington district of said county was entered for taxation for the year 1876 on the land books of that year in the name of William H. Morton and was returned delinquent for said year in his name, & was on the 12th day of December, 1877, sold in his name for the non-payment of taxes due thereon & purchased by Geo. Henning & others, and that said tract of 40,000 acres & known as the Thos. Wilson survey was not otherwise entered for taxation on said books for said year 1876 in the name of any other party or parties than in that of William H. Morton.

Given under my hand this 18th day of July, 1884.

C. C. F. McWHORTER, *Clerk.*

FARNSWORTH & DUFFNER.

107 Endorsed as follows: Duffner *vs.* Farnsworth, &c. Exhibit Z in the answer. Filed May 19th, 1886. Teste: J. Y. Moore, clerk.

108 *Answer of A. M. Smith.*

And upon another day, to wit, on the 19th day of May, A. D. 1886, came the defendant A. M. Smith, and by counsel filed in the clerk's office of our said — his separate answer; which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The answer of Alfred M. Smith to a bill filed in said court by Joseph Duffner against him and others.

Respondent, saving the full benefit of all proper grounds for demurrer to said bill, answering, says:

He admits there is in the counties of Upshur, Webster, and Randolph a tract of land of about forty thousand acres known as the "Thomas Wilson survey;" that said tract of land was returned delinquent for the non-payment of taxes in the name of Wil-
109 liam H. Morton for the year 1876 and was sold by the sheriff for same, as stated in the bill of the plaintiff, though he was not present when same was sold. Respondent denies that on the 11th day of December, 1877, the day before the alleged sale, he entered into the agreement in writing filed with the bill as "Exhibit A." He did not sign said paper until months after said tax sale; he believes it may have been a full year after said tax sale. He signed it when presented to him, and he believes this was about or just after the period for redemption had expired. There had been no previous understanding, so far as he knows, and it had not been even suggested to him that such agreement was to be entered into. He understood it only to be a declaration between the purchasers of their respective undivided interest in the land.

He admits said tract of land was purchased at said tax sale and that a deed was made by the clerk, as stated in the bill, and that same at said tax sale was purchased at the sum of $642.20 cents. He denies that at the time of making said purchase at said tax sale he was "acquainted with the previous history of the title of said William H. Morton to said tract of land." He denies that he
110 "knew that Morton had no title to said land" or that he and his associates "were acquiring none by the said purchase," nor was he "acquainted with the particular vices in said title," if any, whether charged in said bill or otherwise existing, if any. It is proper here to state that he was at that time and since a resident of Lewis county and happened to be at Buckhannon, the county-seat of Upshur county, when the delinquent land sales in 1877 were being made. It was probably on the 10th day of December, 1877, and it was mentioned to him by Col. Henry Westfall, an old surveyor, that the Thomas Wilson survey of 40,000 acres was to be sold for taxes, and that it was a part of what was known as the Ewan land, and, having known the Ewan land had been released from forfeiture by the Legislature of Virginia, he then made some inquiry and learned that said tract of land, for the delinquent year, was only charged to one person, and from present refreshed memory he believes Morton is the name he then learned it had been charged to with taxes, and he then stated to Col. Westfall that he would agree to put in $50 in purchase of the same, and this was the ex-
111 tent of respondent's knowledge or action in respect to this subject up to that time. Some time after this the sheriff of Upshur county called on respondent in Weston for about the sum of $52 as his share of said purchase and he paid it. He denies that with his knowledge the defendant Philip Thomas was joined with other defendants in the conspiracies charged in the bill to defraud the defendant.

He denies that D. D. T. Farnsworth, Jackman Cooper, and said Thomas were ever impowered by respondent to represent and act for him in the sale of said land, either the one in question or any

other. He knew nothing of defendant Philip Thomas—never heard of him until long after the sale to Duffners, and never saw him until in January, 1885, about the time of the trial at law in respect to this subject. He was then informed that said Thomas had acted for the Hennings, who owned nineteen-fortieths of said land under said tax deed. He never knew anything of the provisions of the written proposition of the said Duffners, signed by them, to purchase such title as respondent and others had under the tax deed, until some weeks after it was made. He never saw it until about
112 January, 1885. He denies that said D. D. T. Farnsworth and Jackman ever had any power or authority to represent or act for respondent in the sale of said land. At one time, as respondent remembers, when some of the purchasers under said deed of the clerk were arranging to pay some taxes on said land it was suggested, as some of the owners were distant, and as said Farnsworth, Cooper, and probably Watson Westfall either lived in Buckhannon or near thereto, that if offers to purchase said land should be made that they would advise the other parties, but no power was given them, as far as respondent knows, either to represent them himself or to bind them in any manner. He never knew the Duffners or the plaintiff until in January, 1885, when he saw them in the city of Wheeling at the trial referred to. He never heard of them until after the making of the alleged contract of April, 1883, called "Exhibit C," signed by them alone, as respondent is informed and believes. Respondent denies that it was from the first, or that it was at any other time, the intention of respondent either by himself or otherwise, by association with others, "to sell their title to whomsoever they
113 could thereafter defraud into buying the same and deceive into believing that the said title was valid," or that he knew that said "title was utterly worthless;" and he denies that, "knowing the worthlessness of said title which had been so acquired," * * * he "conspired and associated himself with the other purchasers of said land to deceive into believing in the validity of the said title and into purchasing the same whomsoever they could thus deceive and defraud."

These charges are false as to respondent. Respondent denies that when the said contract of April, 1883, or when the said deed to the Duffners — before or since, he knew that he and his cograntors in the deed to Duffners had no title, and denies that he at all times well knew he and his said cograntors did not have any valid title. Respondent is not informed as to the extent of the land within the said tract of land not held for ten years by actual settlers with claim of title, but from information and belief he believes it will exceed 20,000 acres. But as to this question respondent admits the said deed to the said Duffners contained adequate provisions for protection of plaintiff against the contingency should a less quan-
114 tity be ascertained. By his deed he admits its force and by it will abide. Respondent has no knowledge or information touching alleged interfering surveys on said "Thomas Wilson survey." He never heard of them until long since this controversy commenced, when he did hear it suggested that an older survey,

called "the Bond survey," might, if found, cover part of it, but also heard and believes it to be forfeited to the State. Respondent admits he received his share of the $15,000 paid for said land. Respondent has no knowledge or information touching the other matters and allegations of the bill of the plaintiff not hereinbefore answered, & cannot therefore make further answer touching the same, and therefore, not being able to make further answer in respect to such other matters and allegations not here answered, he denies them.

Respondent here says that he was one of the purchasers of said tract of land under a sale made under the laws of the State; that he paid his money for it. He had reason to believe he did get title, perhaps not to the full extent of the boundary. In good faith he continued to pay taxes thereon. He never authorized any one to sell his interest. No one was authorized to represent him
115 in respect to the matter. Being informed that the Duffners had made an offer for just such title as had been acquired by the tax deed, he agreed to so convey and did so. That being bound or under obligations to convey his interest, he for some time declined to do so, for he was not advised that title was bad, nor is he so yet informed, and thought it should not be sold at the offer. He is a farmer, and not, therefore, familiar in respect to such matters. He does not believe, as the plaintiff had within the reach of his observation and judgment the means of obtaining information touching the title, that he, as far as he acted & that only to the extent of conveying his interest, should in any manner be held liable for deficiency in title, if it exists.

He denies all charges tending in any manner to implicate him in any of the alleged conspiracies. He denies all frauds, and, having answered, prays to be hence dismissed with his costs most unjustly imposed.

A. M. SMITH.

JNO. BRANNON,
Respondent's Att'y.

STATE OF WEST VIRGINIA, *Lewis County,* } *To wit:*

116 Alfred M. Smith, defendant named in the foregoing answer, being duly sworn, says the facts and allegations therein contained are true except so far as they are therein stated to be on information, and that so far as they are therein stated to be on information he believes them to be true.

A. M. SMITH, *Defendant.*

Taken, sworn to, and subscribed before me, a notary public, &c., of said county of Lewis. this 17th day of May, A. D. 1886.

Given under my hand and official seal this 17th day of May, 1886.

[Seal W. L. Dunnington, Notary Public, Lewis Co., W. Va.]

W. L. DUNNINGTON,
Notary Public.

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth and others. Answer of A. M. Smith. Filed May 19th, 1886. Test: J. Y. Moore, clerk.

117. *Answer of Cyrus Hinkle.*

And upon another day, to wit, on the 14th day of June, 1886, came Cyrus Hinkle, and by counsel filed in the clerk's office of our said cour- his separate answer; which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The separate answer of Cyrus Hinkle to a bill filed by Joseph Duffner against him and others.

This respondent, for answer to said bill and to such parts thereof as he is able to answer unto, answering, says that it is true he was one of the purchasers at a tax sale of the 40,000 acres of land in the bill mentioned, and that the same was conveyed by the clerk to himself and others, as stated in the bill, and that he did unite in the conveyance of the same to the Duffners, as stated in the bill.

Respondent denies that prior to the said tax sale, on the
118 12th of December, 1877, he entered into any agreement in respect to the purchase of said land.

It is true the sale of delinquent lands was a subject of talk, and it was suggested to this respondent that a tract of 40 000 acres was to be sold for taxes by the State, and it was thought that the purchaser would get a good title to the said tract of land and that the State's title to it would be good. Respondent then made inquiry of the sheriff who sold said land about it and the title to it—this respondent was wholly ignorant of the title—the sheriff who was then crying the land, and this was before sale of the same, the sale being on that day postponed. The sheriff replied that the title would be good, and that it was a good investment. The respondent made inquiry of surveyors familiar with the land, and was informed to the same effect, and so he authorized a friend to act for him in the purchase of one share of the same. He was not present when the sale was made, but was on his own farm, some several miles distant, when the same was sold. As to the agreement in writing, "A," this
respondent did not sign the same on the 11th of December,
119 1877, but it was signed by him some considerable time thereafter. He did not know until it was presented to him to sign that such a paper was thought of, or that it was necessary, but, regarding it merely as a paper to show the respective interests of the purchaser, he signed it, and respondent supposed that it might be necessary to show how the deed should be made to the purchasers.

Respondent denies that at the time of making the said purchase he was acquainted with the previous history of the title of the said Wm. H. Morton to said tract of land. He knew nothing of the Mor-

ton title or of the Thomas Wilson survey. He learned the locality of the land and knew it was wild land, so called, chiefly unoccupied, and had reason to believe and did believe that the State's title to said tract of land he acquired by said purchase would confer valuable interests to him, and so in good faith he purchased an interest without any other purpose or design than to acquire such interest. He denies that he knew that Morton had no title to said land. He denies that he knew that he and copurchasers were acquiring
120 none by said purchase. He denies that he was acquainted with "particular" or any vices in the said title to said land.

He denies that his codefendant, Phillip Thomas, was, with his consent, joined with other defendants in the conspiracy charged in said bill to defraud the plaintiff. He denies said Thomas, with his consent, was one of a committee of three named in the bill. He denies that any committee or other persons were, with his consent, empowered to represent and act for him in the sale of said land. Respondent denies that it was "from the first" his intention to sell said title to whomsoever he or his copurchasers could thereafter defraud into buying the same or deceive into believing the said title was valid. He denies that he knew at "all times" or at any time that said title was worthless. He denies that he conspired and associated himself with the other purchasers to defraud and deceive into believing in the validity of the said title or into purchasing the same whomsoever they could deceive and defraud. These charges are utterly false, untrue, and unfounded.

Respondent has no knowledge or information touching or
121 relating to the transaction, statements, and charges in the bill about the alleged purchase by the said Duffners of said land in April, 1883, except as he derived it from others, and therefore cannot of his own knowledge answer the allegations and charges in the bill in respect thereto; but respondent does not admit the said allegations and charges to be true, and, if material to his interest herein, he calls for full proof thereof. He will here say he never saw the alleged contract in writing signed by the said Duffners. Some time after the said transaction in April, 1883, and probably just before respondent signed the deed to the said Duffners, he heard they had made an offer to purchase the title acquired by the said purchasers at said tax sale. He did not hear of it otherwise or regard it otherwise than as an offer to purchase by them. He was not present. He never saw any of the Duffners until in the town of Buckhannon; probably in the winter of 1885. He saw a person pointed out to him as Joseph Duffner in the town of Buckhannon.

Respondent, further answering, says that he knows nothing whatever of his own knowledge touching the allegations, state-
122 ments, charges, etc., in said bill in respect to the visit of the complainant and his selected counsel to the town of Buckhannon to investigate the title to said land, and cannot, therefore, answer the same except that as to the part thereof whereby it is charged that "others of the owners" of said land repeated to the complainant and his said attorney representations alleged to have been made by said alleged committee, and as to that respondent

denies that he then or at any time made or repeated any such representations, if ever made. He was not present; knew nothing of said visit to Buckhannon or proposed or actual investigation of said title to said land by said complainant or his attorney.

Respondent knows nothing whatever about whether the deeds alleged in the bill *to be* copies to Morton, Howard, and others, and therefore cannot answer the part of the bill relating thereto.

Respondent knows nothing whatever of the interferances of other surveys with the Wilson survey, or whether such interferances exist or not, or, if they exist, whether they are forfeited or not.

123 Respondent has no knowledge whatever of the transactions alleged in the bill as to the amount to be paid by the said Duffners or to whom paid or in what proportion or what amounts. He admits he received his proper share of the $15,000 purchase-money shortly after the deed to the said Duffners was accepted, as he is informed and beleives.

Respondent denies that he "well knew" when the conveyance was made to said Duffners that the consideration upon which the plaintiff paid the purchase-money wholly failed. He denies that when the said conveyance was made that he knew that the grantors therein had no title to said land. He demes that he or they at any time or at all times "well knew" they had no valid title to said tract of land.

Respondent has no information himself of the quantity of land in said tract which had not been held for ten years by actual settlers with claim of title either in April, 1883, before or since. He is, however, informed and so beleives there are more than 20,000 acres not so occupied.

Respondent here says that he has made in the foregoing as full an answer as he is able to make to said bill, and as to matters and allegations of said bill which he has not here answered he denies

124 the same and calls for proof thereof if material.

Respondent in all respects, from the said purchase at said tax sale, in the said purchase, in the acceptance of the bid of the said Duffners for said land, in the execution of the deed, *he* has acted in entire good faith, without any purpose to wrong or deceive the said Duffners or any other person. His understanding was that the Duffners were to take such title as the purchasers had acquired by the tax purchase, and that that was their voluntary proposition, and although a farmer, without knowledge or information about such matters, he concluded that the means and sources of information by records and otherwise being open to them alike to all other persons that they could protect themselves by investigation if any defects in the title existed.

Respondent, having answered, prays to be hence dismissed with his costs most unjustly imposed.

CYRUS HINKLE.

JNO. BRANNON,
Att'y for Hinkle.

STATE OF WEST VIRGINIA, *Upshur County,* } *To wit:*

125 Cyrus Hinkle, defendant named in the foregoing answer, being duly sworn, says the facts and allegations contained therein are true except so far as they are therein stated to be on information, and so far as they are therein stated to be on information he believes them to be true.

CYRUS HINKLE.

Taken, sworn, and subscribed to before me, a notary public, of said county of Upshur, this 10th day of June, 1886, and the same so certified under my hand and official seal.

[Seal G. A. Newlon, Notary Public, Upshur Co., W. Va.]

G. A. NEWLON, *N. P.*

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth and others. Answer of Cyrus Hinkle. Filed in the clerk's office June 14th, 1886. Test: Jasper Y. Moore, clerk.

126 *Answer of W. D. Farnsworth.*

And upon another day, to wit, on the 14th day of June, A. D. 1886, came the defendant W. D. Farnsworth and, by counsel, filed in the clerk's office of our said court his separate answer, which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The seperate answer of William D. Farnsworth to a bill filed by Joseph Duffner against him and others.

Respondent, for answer to said bill or such parts thereof as he is able to answer unto, answering, says—

That he was one of the purchasers of a tax sale of the "Wilson survey" of 40,000 acres, sold in the name of Morton, as alleged in said bill.

It is true he signed the paper referred to in said bill as "Exhibit A," but it is not true that he signed the same on the 11th of
127 December 1877. He did not know or hear of it before the tax purchase on the 12th of Dec., 1877. He signed it when presented to him, months, probably a year or more, after said tax purchase. He understood it when explained to him and when it was presented for his signature that its purpose was only to show the respective interests which each of the purchasers held under said purchase. He denies that at the time of making said purchase that he was acquainted with the previous history of the title of the said William H. Morton title to said land, or that he knew that said Morton had no title to said land, or that the purchasers were acquiring none by the said purchase, nor was he acquainted with "the particular vices," if any, "in said title."

Respondent learned at time of the sale of said land for delinquent taxes that the title under a sale by the State would be good to said tract of land; learned them from old and experienced surveyors of its locality, title, &c., and then he agreed to become a purchaser and so did become one of the purchasers thereof. He then believed and has no reason to believe otherwise than he obtained title to
128 the extent of his interest to said tract of land. He acted in good faith in making said purchase and has never, so far as he has acted, acted otherwise than in good faith in respect to the subject to the present day. He is ignorant as to the subject of titles to land and rested in the belief that as he bought under a sale by the State he would get the title of the State or that of any person not charged with taxes or of any person charged with taxes who had not paid the taxes.

Respondent denies that his codefendant, Phillip Thomas, has ever, with his consent, joined with other defendants in any conspiracy to defraud the plaintiff, or that he was, with his consent, one of a committee of three, the other two being, as alleged, D. D. T. Farnsworth and Jaakman Cooper, who was empowered, as alleged, by the owners of said land to represent and act for them in the sale of said land. He denies that there ever was any committee appointed or agreed to, with his consent, to represent or act for him in any sale of said land. No one had power or authority to act for him in any sale of said land. Respondent denies "that from the first that he had any intention to sell his interest or title to whom-
129 soever he or his copurchasers could thereafter defraud into buying the same or deceive into believing that said title was valid. He denies that he knew then or at any time that said title so purchased at said tax sale was utterly worthless, or that the purchasers of said land from the sheriff conspired and associated themselves together to defraud and deceive into believing in the validity of said title or into purchasing the same whomsoever they could deceive and defraud. These charges in the bill of the plaintiff are false and untrue.

Respondent has no knowledge himself in respect to the allegations of the bill touching the matters of the alleged contract of purchase by the Duffners in April, 1883. He was not present and was only informed about the transaction some time after, when he was informed that an offer had been made by the Duffners to purchase said land and to take such title as the purchasers had acquired at said tax sale and under the deed of the clerk to them. This could not be other than an offer to purchase, because no one and no committee had power to sell the interest of respondent. He can-
130 not therefore make any further answer touching the allegations in respect to said alleged purchase by the Duffners.

Respondent has no knowledge respecting said transaction alleged in the bill touching the alleged visit of complainant and his counsel, a Mr. Fish, to examine the title to said land, and cannot therefore answer respecting the same, and if material he calls for proof of said allegations. It is true before the visit of complainant and his said counsel he did execute on his part the deed to said Duffners, with

an understanding that the complainant would examine the records as to title with his counsel before it was delivered and before purchase-money should be paid by the complainant.

Respondent denies that he in any way or manner or by any means prevented or tried to prevent complainant from investigating the title or from getting information touching the same. Upon the contrary, respondent learned complainant was to have title investigated and respondent expected him & wished him to do so.

Respondent has no knowledge about the *of* alleged surveys interfering with the said Wilson survey or whether such interferances exist and calls for proof thereof if material.

131 Respondent admits he received his proper part of the fifteen thousand dollars purchase-money. Respondent will here state that he refused for a long time after said alleged purchase by the Duffners to unite in deed to Duffners, because he had confidence in the title and preferred to take his share in kind, but finding others were willing he reluctantly did execute it, as he did not wish perversely to deprive others from carrying out or accepting the offer of the Duffners for the whole title.

Respondent denies all fraud charged or imputed in the bill of the complainant, and, having answered as fully as he is able to answer, prays to be hence dismissed with his costs unjustly imposed.

W. D. FARNSWORTH.

JNO. BRANNON,
Att'y for Respondent.

STATE OF WEST VIRGINIA, }
Upshur County, } *To wit:*

I, William D. Farnsworth, defendant named in the foregoing answer, being duly sworn, say that the facts and allegations therein contained are true except so far as they are therein stated
132 to be on information, and that so far as they are therein stated to be on information he beleives them to be true.

W. D. FARNSWORTH.

Taken, sworn, and subscribed to before me, a notary public for said county of Upshur, this 9th day of June, 1886, and the same is so certified under my hand and official seal.

[Seal G. A. Newlon, notary public, Upshur Co., W. Va.]

G. A. NEWLON,
Notary Public.

Endorsed as follows: Joseph Duffner *vs.* W. D. Farnsworth and others. Answer of W. D. Farnsworth. Filed in the clerk's office June 14th, 1886. Test: Jasper Y. Moore, clerk.

133 *Answer of Valentine Strader.*

And upon another day, to wit, on the 14th day of June, 1886, came the defendant Valentine Strader, and, by his counsel, filed in the clerk's office of our said court his separate answer, which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The seperate answer of Valentine Strader to a bill filed by Joseph Duffner against him and others.

This respondent, for answer to said bill or to such parts thereof as he is able to answer unto, answering, says that it is true that he was one of the purchasers at a tax sale of the 40,000 acres of land in the bill mentioned, and that the same was conveyed by the clerk to himself and others, as stated in the bill, and that he did unite in the conveyance of the same to the Duffners.

Respondent denies that he signed the paper-writing referred
134 to in the bill as "Exhibit A" on the 11th day of December, 1877. His present belief is that he signed the same about or more than a year after the purchase, most likely it was in the month of February, 1879. It was not the result of any agreement that such paper should be signed before the purchase at such tax sale. It was not suggested that such paper would be necessary until it was presented to him for his signature, and then it was deemed necessary to show the respective interests of the purchasers, and also necessary in order to have the deed properly made.

Respondent will here say, in respect to his participation in said purchase at said tax sale, that he happened to be in the town of Buckhannon, he being a resident in the county, on the day of said tax sale. An opinion was generally expressed that the purchaser would get the title by buying said land under the tax sale. He made inquiry of surveyors who were familiar with said land and title, who expressed the same opinion. Having been raised in the county of Upshur, learning the location of the land, and knowing that it covered a country known as wild and chiefly unoccupied land, and understanding that he would get the State's title
135 to the land to the extent of his purchase, he concluded that, although it would take some six or seven hundred dollars to purchase it, he would get a good title toa very large extent, and for that reason become a good investment for his money, and in the same good faith he has continued till 1883 or 1884 to pay large amount of taxes on said land.

Respondent denies that at the time of making the said purchase he was acquainted with the previous history of the title of Wm. H. Morton to said land. He knew nothing of the Morton title or of the Thomas Wilson survey. He denies that he knew Morton had no title to said land. He denies that he knew that he and copurchasers were acquiring none by said purchase, nor does he know so yet. He denies that he was acquainted with "particular" or any vices in said title to said land. He denies that his codefendant, Phillip Thomas, was with his consent joined with other defendants in the conspiracy charged in said bill to defraud the plaintiff, nor does he believe any such conspiracy was ever formed. He denies that the said Thomas with his consent was one of the committee
136 of three named in the bill. He denies that any committee or other persons were with his consent empowered to act for him

in the sale of the said land. It is true with the consent of some of the purchasers several persons who were purchasers were agreed upon to look to the matter of taxes on said land, gather in necessary funds to pay taxes, and such like services, but they were never authorized or empowered to represent and act for them in any sale of the land.

Respondent denies that it was "from the first" his intention to sell said title to whomsoever he or his copurchasers could thereafter defraud into buying the same or deceive into believing the said title was valid. He denies that he knew "at all times" or at any time that said title was worthless.

He denies that he conspired and associated himself with the other purchasers to defraud and deceive into believing in the validity of said title or into purchasing the same whomsoever they could deceive and defraud. These charges are grossly false and untrue, fabricated and promulgated in said bill, as respondent believes upon his *his* own information and upon the information of
137 others, without any foundation in fact. Respondent has no knowledge or information touching or relating to the transactions, statements, allegations, and charges in the bill about the alleged purchase by the said Duffners of said land in April, 1883, except as he derived it from others, and therefore cannot on his own knowledge, answer the same, but respondent does not admit them to be true, and, if material to his interest herein, he calls for full proof thereof.

Respondent was informed shortly after said alleged contract that the Duffners had signed a paper-writing proposing to buy said land of said tax purchasers at a stipulated price, and that the same was not signed by any other persons, and so he regarded this as a mere offer to purchase. This respondent refused and declined for a considerable time to accept the offer on his part, for he had confidence that under his said purchase he would be able to hold a large extent of said land. He did, however, unite in the deed to said Duffners, as he did not wish to be in the way of others in accepting the bid of the said Duffners. Respondent will here state that some
138 time in or about July, 1883, and after he had executed on his part the deed to the said Duffners, he was informed by D. D. T. Farnsworth that the plaintiff, with some counsel to be selected by him, would visit the town of Buchannon to investigate the title of said purchasers at said tax sale and of grantors in said deed before accepting the deed and before the purchase-money was paid. Respondent was glad to hear that such investigation would be made by the complainant and his counsel, and, being so informed of such purpose and being in said town about the time of their arrival in Buckhannon, he was in the clerk's office with them about the time the investigation by them commenced, and he was present most of the time from day to day until the completion of such examination by Mr. Fish, and was present at the conclusion of the same. Said Mr. Fish seemed to be acting as the attorney for complainant, and he was so informed by complainant that he was his attorney. This examination was continued for three days by the said Fish, the said complainant being in and out during

the investigation. In this investigation by the said Fish he called for and examined the assessor's tax books, the
139 delinquent list, the report or return of the sheriff as to sale — said land, and the deed of the clerk to the purchasers of said land at said tax sale. It appeared to the said Fish and was so spoken of that said land was returned delinquent for the non-payment of taxes thereon for one year, being the year for which it was sold, and, further, that the said tract of land was not charged on the said tax books for that year to any other person than the said Wm. H. Morton. In making further investigation the said Fish discovered that the record of what was supposed to be of the deed to Morton, and perhaps to others under whom Morton claimed title, were only records of copies or what purported to be copies. He then or about that time called for the laws in respect to tax sales, which were furnished to him, and, after examination, made remarks, in substance, that *as* the land was not charged in the year for which it was charged to Morton in the name of any other person on the tax books, and that it made no difference about the deed to Morton. He also discovered in his investigation that for one or more previous years the said tract of land was charged on tax
140 books with taxes in the name of Thomas Wilson, the patentee, and was not charged for said years on said tax books in the name of any other person; that it had been returned delinquent and sold by the sheriff and purchased by the State several years before the purchase by respondent and others. It did not appear that it had been redeemed from the State from anything that appeared in said office.

Respondent therefore denies the allegations and statement in the said bill that neither the said attorney or the plaintiff in fact investigated the title to the said land. The said attorney did in fact minutely and carefully during the said three days investigate the title of respondent and others under their tax deed by the records in said office, and he denies that the plaintiff did not rely upon his said attorney to make any investigation of the said title; upon the contrary, the plaintiff asserted that he had brought him there to investigate the title, and would not pay for the land and take the deed unless his said attorney pronounced the title to be good.

He denied that he repeated to the said attorney at said time
141 of investigation any representations that had been made by said alleged committee or others in interest, and he denies that he or any other person in his hearing or presence made any representations about the title to the said land. It was the desire of respondent that investigation should be made. Respondent will here further state that on the third and last day of said investigation and at the conclusion thereof the said Fish remarked, in the hearing of this respondent, Henry F. Westfall, D. D. T. Farnsworth, Phillip Reger, and others, to the complainant in substance as follows: "Mr. Duffner, you can pay your money and take the deed. I find everything as these gentlemen have represented." The said H. Westfall then remarked to the said Fish and said complainant in substance as follows: "Gentleman, if you are not entirely satis-

fied make any other or further examination until you are satisfied. Some people say our title is a 'wild-cat' title or only a tax title. We want you to be satisfied from investigation, for we don't want your money unless you are satisfied. We don't want any after-clapps about this matter." In this the respondent, said Farns-
142 worth, and others in interest then present expressed to said Fish and complainant their concurrence and desire. Respondent denies that he then or at any time used or employed any means to divert or prevent the said Fish or complainant from investigation or information in other sources. Respondent knows nothing whatever of the interferances alleged in the bill, of other surveys with the said Wilson survey, or whether such interferances exist or not, or, if they exist, whether they are older or not or forfeited or not.

Respondent has no personal knowledge whatever of the transactions alleged in the bill as to the amounts to be paid by the said Duffners or to whom paid or what amounts. He admits he received his proper share of the $15,000 purchase-money shortly after the deed to the said Duffners was accepted.

Respondent denies that he "well knew" when the conveyance was made to the said Duffners that the consideration upon which the plaintiff paid the purchase-money "wholly failed." He does not know so now and does not believe so. He denies that when the said conveyance was made that he knew the grantors therein had no title to said land. He denies that he "at any time or at all
143 times well knew they had no valid title to said tract of land." Respondent has no information of the quantity of land in said tract which had not been held for ten years by actual settlers with claim of title either in April, 1883, before, or since. He is, however, informed and so believes there are more than 20,000 acres not so occupied, but as to this there is a provision and assurance in said deed with adequate remedy in another form on said deed for this real or supposed grievance.

Respondent denies that it was notorious in Upshur county that said title was imperfect, invalid, or worthless, as charged in the bill.

Respondent here says that he has made in the foregoing as full an answer as he is able to make to said bill, and as to matters and allegations of said bill which he has not hereby answered he denies the same and calls for proof thereof, if material.

Respondent — in all respects in the purchase at said tax sale, from the time of the said purchase, in the acceptance of the offer of said Duffners for said land, and in the execution of the deed to them, he has acted in entire good faith, without any purpose to wrong
144 or deceive the said Duffner or any other person in respect to it. His understanding was that the Duffners were to take such title as the purchasers had under their tax purchase, and that that was their proposition; and, knowing that he was wholly incapable of investigating the title himself, he desired that they should investigate, as afore stated, and that the means of investigation were open to them or the plaintiff, and that they could and would pro-

tect themselves from investigation against any defects in the title, if any.

Respondent denies all fraud charged in the bill; and, having answered, prays to be hence dismissed with his costs most unjustly imposed.

VALENTINE STRADER.

JNO. BRANNON,
Att'y for Strader.

STATE OF WEST VIRGINIA, *Upshur County,* } *To wit:*

Valentine Strader, defendant named in the foregoing answer, being duly sworn, says the facts and allegations contained therein are true, except so far as they are therein stated to be on information, and so far as they are therein stated to be on information he believes them to be true.

145 VALENTINE STRADER.

Taken, sworn, and subscribed to before me, a notary public of said county of Upshur, this 10th day of June, 1886, and the same so certified under my hand and official seal.

[Seal G. A. Newlon, Notary Public, Upshur Co., W. Va.]

G. A. NEWLON, *N. P.*

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth and others. Answer of Valentine Strader. Filed in the clerk's office June 14th, 1886. Test: Jasper Y. Moore, clerk.

146 *Answer of H. C. Coon.*

And upon another day, to wit, on the — ——, 1886, came the defendant H. C. Coon, and by his counsel filed in the clerk's office of our said court his separate answer; which answer is in the words and figures following, to wit:

The separate answer of Henry C. Coon to a bill of Joseph Duffner against him and others, filed in the district court of the United States for the district of West Virginia, at Wheeling.

To Hon. J. J. Jackson, judge of said court:

Respondent, for answer — said bill, says he was a purchaser of one-fortieth part of the land in the bill mentioned at the sale thereof for taxes, as charged in the bill; that it is true said land was conveyed, as stated in the bill, by the clerk to him and others. He knows nothing whatever of his own knowledge of the negotiations or transactions alleged in the bill preceding the conveyance by himself and others to
147 the plaintiff. All that he can state is that he was applied to unite in the deed to convey said land to the plaintiff at the price of $15,000, which he did, and received one-fortieth part of that sum. He had no communication or negotiations with plaintiff.

He did not know the plaintiff, and he did not consider he did more than to transfer his undivided interest in said land derived by said tax deed to the plaintiff. This was all he was asked to do. He denies that any person was ever authorized by him to sell said land or his interest therein. He never authorized D. D. T. Farnsworth, Cooper, or Thomas to sell his interest in said land. He denies that he had any fraudulent purposes to cheat or deceive any one when he entered with others in the purchase of said land at the tax sale thereof. He knew it was land known as the Thomas Wilson survey, but he had no knowledge of the title, and has not now any knowledge about the title. It was sold by the State, and respondent did not consider he was doing wrong to purchase or that he would do wrong to sell just such title as he had so obtained. He made no representations to title to the plaintiff. No one was employed
148 to act for him in any sale of said land. So far as said bill charges or imputes any fraudulent act or purpose in respect to said purchase or sale of said land he denies the same. He denies all the alleged confederations and combinations of respondent with his codefendants or any of them. He had no other relation to the whole transaction than as stated in this answer.

Respondent, having answered, prays to be hence dismissed with his costs unjustly imposed.

H. C. COON,
By Counsel.

JNO. BRANNON,
Att'y for Respondent.

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth and others. Answer of H. C. Coon.

149 *Answer of Victoria V. Hart and Husband.*

And upon another day, to wit, on the 14th day of June, 1886, came the defendants Victoria V. Hart and Creed W. Hart, her husband, and, by their counsel, *and* filed in the clerk's office of our said court their joint answer, which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

To joint answer of Victoria V. Hart and Creed W. Hart to a bill filed in said court by Joseph Duffner against them and others.

Respondent- admits that the female respondent is one of the heirs and devisees of Henry F. Westfall, deceased. Respondents say they have no personal knowledge of the transactions mentioned in said bill. They have no knowledge of the matters of the allegations, charges, and statements in said bill, and cannot therefore answer unto the same, and, if material to their interest, they call for full

proof thereof. Respondents having answered, they pray to be hence dismissed with their costs.

150 C. W. HART.
V. V. HART.

JNO. BRANNON,
Att'y for Respondent-.

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth and others. Answer of Hart and wife. Filed in the clerk's office June 14th, 1886. Test: Jasper Y. Moore, clerk.

151 *Answer of L. S. S. Farnsworth.*

And upon another day, to wit, on the 14th day of June, 1886, came the defendant L. S. S. Farnsworth, and by his counsel filed in the clerk's office of our said court his separate answer, which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The separate answer of L. S. S. Farnsworth, defendant, to a bill filed by Joseph Duffner against him and others.

Respondent, for answer to said bill so far as he is able to answer unto, answering, says that it is true he was one of the purchasers at a tax sale of the 40,000 acres of land in the bill mentioned, and that the same was conveyed by the clerk to himself and others, as stated in the bill, and that he did unite in the conveyance of the same to the Duffners. Respondent was the owner by purchase of two shares under said purchase and he acquired after said tax sale one share of Solomon Day and one and
152 one-half shares of J. J. Farnsworth, and so respondent conveyed to the said Duffners four and one-half shares. Respondent does not remember when he signed the paper, "A," referred to in the bill. He believes it was some time after the said tax sale was made. He did it about the time he believes the deed was made to the purchasers, supposing it to be necessary to show the interests of the purchasers.

Respondent will here say that at the time when said land was being sold for taxes, in 1877, he made inquiry of old surveyors that he thought knew all about it and who he believes did know all about it. One of them stated to him, when he was making inquiries of him, that the same land had been charged with taxes to Thos. Wilson, the patentee, had been sold by the sheriff for taxes at same time prior to 1877, and had been purchased in by the State, and, as it was to be sold again for taxes in the name of Morton and not charged with taxes to any other person, the purchaser would get the title to the said land, whether in the State, Morton, or any other person. Upon this information and other information upon inquiry

he believed he would get a good title to said land to the ex-
153 tent of his interest in said purchase, and so in good faith he united in said purchase. Respondent denies that at the time of making the said purchase he was acquainted with the previous history of the title of Wm. H. Morton. He denies that he knew Morton had no title to said land. He denies that he and copurchasers were acquiring none by said purchase, nor does he know or believe so yet. He denies that he was acquainted with "particular" or any vices in said title to said land. He denies that his codefendant, Phillip Thomas, was with his consent joined with other defendants in any conspiracy charged in said bill, nor does he believe any such conspiracy was ever formed. He denies that said Thomas with his consent was one of committee of three named in the bill. He denies that any committee or other persons were with his consent empowered to act for him in the sale of the said land. He denies that it was from the first his intention to sell said title to whomsoever he or his copurchasers could thereafter defraud into buying the same or deceive into believing the said title was valid. He denies that he knew at all times or at any time that the said title was worthless. He did not believe so at any time. He denies that he con-
154 spired and associated himself with the other purchasers to defraud and to deceive into believing in the validity of said title or into purchasing the same whomsoever they could deceive and defraud. These charges are false and untrue.

Respondent has no knowledge or information touching or relating to the transactions, statements, allegations, and charges in the said bill about the alleged purchase by the said Duffners of said land in April, 1883, and therefore cannot, on his own knowledge, answer the same, but he does not admit them to be true, and does not believe them to be true, and therefore denies them and calls for proof thereof. Respondent was informed shortly after said alleged contract that the said Duffners had signed a paper, and the same was not signed by any other person, proposing to pay $15,000 *dollars* for said land. Respondent regarded this as a mere offer, and some time thereafter respondent agreed to accept the offer, and did unite in the deed conveying the said land to the said Duffners, and he admits that after the said Duffners, by his counsel, had examined the title and accepted the deed he received his proper part of the $15,000 purchase-money.

155 Respondent denies that he used or employed any means, when the said Duffners were in Buckhannon in April, 1883, when they were negotiating for the purchase of said land—used or employed any means to keep or divert them from making inquiry of other persons or from obtaining information from any source, then or at any other time, in regard to the title to the said land. Respondent has no personal knowledge of the matters and things alleged in said bill touching matters and allegations alleged therein to have occurred upon the occasion of the visit of the complainant and his counsel, Mr. Fish, except that, as respondent believes, on, as he believes, the third day of the investigation by him, he entered the clerk's office of the county court, then and there found the said

Fish examining the books and records, and the said Fish remarked that he had found everything correct. He remarked directly then again to the complainant that he had found everything correct, as represented by these gentlemen, and you can accept the deed. The complainant then in substance remarked that he would now take the deed and hand over the checks for the money.

156 Respondent denies that he repeated to the plaintiff or his said attorney any representations which had theretofore been made by any alleged or assumed committee or other persons, if any such had been made, and he denies that he made any fraudulent or other representations then or at any time to induce the said attorney or the said plaintiff, or that he used any means to prevent the said plaintiff or his said attorney from inquiring about or examining into the said title or from ascertaining the vices therein, if any. He denies that the said attorney did not in fact investigate the said title. He is informed and believes that he did investigate the same by the records and to his satisfaction without hinderance or interferance.

Respondent has no knowledge or information about the deeds or what purports to be copies of deeds under which Morton claimed title, and cannot answer the allegations of the bill touching that matter. He knows nothing whatever of the alleged interferences of other surveys with the said "Wilson survey," or whether such interferances exist or not, or, if they exist, whether they are older or not or forfeited or not.

157 Respondent knows nothing himself about the alleged failure of the plaintiff to obtain possession of said land. He does not believe from information that he tried to obtain possession. Respondent denies that he "well knew when the conveyance was made to the said Duffners that the consideration upon which the plaintiff paid the purchase-money wholly failed." He does not know so now. He denies that when the said conveyance was made that he knew the grantors therein had no title to said land. He denies that he "at any time or at all times well knew that the grantors therein had no title to said land." He has no information of the quantity of land in said tract which had not in 1883 been held for ten years by actual settlers. He is, however, informed and so believes that there are more than 20,000 acres, as stipulated in said conveyance to Duffners, not so occupied. Respondent denies that it was notorious in Upshur county that said title was imperfect, invalid, or worthless, as charged in the bill. Respondent here says that he has made in the foregoing as full an answer as he is able to make to said bill; and as to the matters and allegations of

158 said bill which he has not hereby been able to answer, he denies the same and calls for full proof thereof, if material. Respondent denies all fraud and deceit charged in said bill, and, having answered, prays to be hence dismissed with his costs most unjustly imposed.

L. S. S. FARNSWORTH.

STATE OF WEST VIRGINIA, *Upshur County,* } *To wit:*

L. S. S. Farnsworth, defendant named in the foregoing answer, being duly sworn, says the facts and allegations contained therein are true except so far as they are therein stated to be on information, and so far as they are therein stated to be on information he believes them to be true.

L. S. S. FARNSWORTH.

JNO. BRANNON,
Att'y for Respondent.

Taken, sworn, and subscribed to before me, a notary public of said county of Upshur, this 11th day of June, 1886, and the same so certified under my hand and seal.

[Seal G. A. Newlon, Notary Public, Upshur Co., W. Va.]

G. A. NEWLON, *N. P.*

159 Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth and others. Answer of L. S. S. Farnsworth. Filed in the clerk's office June 14th, 1886. Test: Jasper Y. Moore, clerk.

160 *Answer of A. B. Clark.*

And upon another day, to wit, on the 14th day of June, A. D. 1886, came the defendant A. B. Clark and by his counsel filed in the clerk's office of our said court his separate answer, which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The seperate answer of A. B. Clark to a bill filed by Joseph Duffner against him and others.

This respondent, for answer to said bill or to such parts thereof as he is able to answer unto, answering, says that it is true that he was one of the purchasers at a tax sale of the 40,000 acres of land in the bill mentioned, and that the same was conveyed to himself and others, and that he did unite in the conveyance of the same to the Duffners.

Respondent denies from his best recollection that the paper-writing "A" was signed by him on the 11th of December, 1877, before said purchase. His present belief is that he signed it months
161 after the purchase. It was not the result of any previous agreement to the purchase at said tax sale. It was deemed proper some time about the time when the year after the sale was about to expire or had expired that it would be proper to have such paper to show the respective interests of the purchasers, and it was the desire of the parties thereto, and especially of himself, to have such paper to contain a provision showing a disclaimor as to actual

settlers on the land, and to assure them of such purpose of the purchasers it was deemed best to make it a matter of record, and so it does contain such provision and was made a matter of record by the clerk.

Respondent has no recollection that he observed the date of said paper when he signed it.

Respondent will here say, in respect to his participation in said purchase at said tax sales, that he heard, about the time of the sale by the sheriff, that the said tract of land was to be sold, and that a belief was expressed that the purchaser would get a good title, and that several persons—as the amount of money necessary to purchase would be considerable, it was suggested to respondent—could
162 be united in making a purchase of it.

Respondent then made inquiry of surveyors, sheriff, and probably others, about the land, title, etc., and respondent agreed to and did unite in said purchase; and, believing the title to be good to a large *extend* of the land, he expected it to be redeemed.

Respondent denies that at the time of making the said purchase he was acquainted with the previous history of the title of Wm. H. Morton to said land. He denies that he knew Morton had no title to said land. He denies that he knew that he and copurchasers were acquiring more by said purchase, nor does he know so yet. He denies that he was acquainted with "particular" or any vices, if any, in said title to said land. He denies that his codefendant, Phillip Thomas, was, with his consent, joined with other defendants in the conspiracy to defraud the plaintiff, nor does he believe any such conspiracy was ever formed. He denies that the said Thomas, with his consent, was one of any committee of three named in the bill. He denies that any committee or other persons were, with his consent or knowledge, empowered to act for him in the sale of the said land. It is true at one time D. D. T. Farnsworth, Jack-
163 man Cooper, and Watson Westfall were agreed to to act for purchasers, some of whom were distant and some residing in other States, in respect to taxation on said land and to give immediate attention to the subject of the land, and they chiefly acted in respect thereto, but they had no power to sell said land. Respondent denies that it was "from the first" his intention to sell said title to whomsoever he or his copurchasers could thereafter defraud into buying the same or deceive into beleiving the said title was valid. He denies that he knew at "all times" or at any time that said title was worthless; he does not know so yet.

He denies that he conspired and associated himself with the other purchasers to defraud and deceive into beleiving in the validity of said title or into purchasing the same whomsoever they could deceive and defraud. These charges are grossly false and untrue. Respondent has no knowledge personally of the charges and allegations of the said bill touching the transactions relating to the alleged purchase of said land by the Duffners in April, 1883, and therefore respondent cannot answer unto the said charges and
164 allegations, and, if material to his interest, he denies the same and calls for proof thereof. After this respondent understood

and never regarded it otherwise than as an offer to purchase and as a bid by the said Duffners. Respondent, on his part, accepted it some time before the deed was made, and did execute the deed to the Duffners on his part.

Respondent knows nothing of the matters of the allegation touching the transaction of the said Duffners and his attorney, alleged in the bill, and therefore cannot make full answer thereto on his own knowledge; but he denies that he used or suggested any means or that he knew of any means being employed by any one to prevent the plaintiff or his attorney from inquiring into the said titles or from ascertaining the vices, if any, therein. He denies that he repeated any representations to the plaintiff and his attorney, charged theretofore to have been made by Farnsworth, Cooper, and Thomas.

Respondent remembers that on one of the days on which the attorney of the said plaintiff was in the town of Buckhannon respondent entered the clerk's office and found the said attorney, a Mr. Fish,
and the plaintiff therein examining deed books, records, etc.,
165 as he then understood, touching the matter of title to said land, and therefore respondent denies that the said attorney did not investigate the title to said land.

Respondent knows nothing whatever of the interferances alleged in the bill to his own knowledge of other surveys with the said "Wilson survey," or whether such interferances exist; if not or if they exist, whether they are older or not or forfeited or not. The respondent will here say that he had heard it stated at some time that there was a survey called the "Davinport survey," which lapped on it to a comparative small extent, as probable to the extent of two, three, or four thousand acres. Whether true or not respondent is unable to say. Respondent denies that he at any time, directly or indirectly, used or employed any means or that he knew of any means being employed by any other person to prevent inquiry or investigation by the plaintiff or by the plaintiff and the other Duffners or by the attorney of the plaintiff into the title of the said land, and these allegations, put in the form and connections by the bill
in different aspects, are untrue as to this respondent, and
166 upon information he believes them to be untrue as to other parties in interest here.

Respondent knows nothing himself about the alleged failure of the plaintiff to obtain possession of said land. He does not beleive, from information, that he tried to obtain possession, and it is most unreasonable that he could not take possession of a survey so vast in extend and covering a country so sparsely occupied.

Respondent has no personal knowledge of the transactions alleged in the bill as to the amounts to be paid by the said Duffners or to whom paid or what amounts. He admits he received his proper share of the $15,000 purchase-money.

Respondent denies that he "well knew when the conveyance was made to the said Duffners that the consideration upon which the plaintiff paid the purchase-money wholly failed." He does not know so now. He denies that when the said conveyance was made that he knew the grantors therein had no title to said land. He

denies that he "at any time or at all times well knew they had no valid title to said tract of land." Respondent has no information of the quantity of land in said tract which had not been held for ten years by actual settlers with claim of title either in
167 April, 1883, before or since, except in a general way upon information. He is, however, informed and so beleives there are more than 20,000 acres not so occupied; but as to this there is a provision in said deed covering this matter.

Respondent denies that it was notorious in Upshur county that said title was imperfect, invalid, or worthless, as charged in the bill. Respondent here says that he has made in the foregoing as full an answer as he is able to make to said bill; and as to matters and allegations of said bill as he has not hereby answered he denies the same, and calls for proof thereof if material. Respondent in all respects in the purchase at said tax sale, from the time of the said purchase, in the acceptance of the offer of the said Duffners for the said land, and in the execution of the deed to them, *he* has acted in entire good faith. He bought land offered by the State at a public sale under its public laws and paid his money for it at the invitation of the State; that he sold such title as he acquired as it would seem he had a right to do. His title could only be evidenced by the public records, and they were open alike to the vendors and the purchasers, and on this question respondent claims the vendors and the purchasers stood upon equal grounds, enjoying equal oppor-
168 tunities for investigation, a privilege which the plaintiff by his selected attorney enjoyed to their satisfaction without hinderance or diversion from such investigation, as respondent is informed and beleives.

Respondent denies all fraud charged or imputed in said bill, and, having answered, prays to be hence dismissed with his costs most unjustly imposed.

A. B. CLARK.

JNO. BRANNON,
Att'y for Clark.

STATE OF WEST VIRGINIA, } *To wit:*
County of Upshur, }

A. B. Clark, defendant named in the foregoing answer, being duly sworn, says the facts and allegations contained therein are true except so far as they are therein stated to be on information, and so far as they are therein stated to be on information he beleives them to be true.

A. B. CLARK.

Taken, sworn, and subscribed to before me, a notary public, of said county of Upshur, this 11th day of June, 1886, and the same so certified under my hand and official seal.

169 [Seal G. A. Newlon, Notary Public, Upshur Co., W. Va.]

G. A. NEWLON, *N. P.*

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth and others. Answer of A. B. Clark. Filed in the clerk's office June 14th, 1886. Test: Jasper Y. Moore, clerk.

170 *Answer of Philip Thomas.*

And upon another day, to wit, on the 14th day of June, 1886, came the defendant Philip Thomas and, by his counsel, filed in the clerk's office of our said court his separate answer; which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The separate answer of Philip Thomas to a bill filed in said court by Joseph Duffner against respondent and others.

To Hon. J. J. Jackson, judge of said court:

This respondent, for answer to said bill or to such parts thereof as he can answer or *as* advised it is necessary for him to answer to, answering, says:

Respondent is informed and believes there is a survey in the counties of Upshur, Webster, and Randolph known as the Thomas Wilson survey; that it was delinquent for non-payment of taxes for year 1876, and that same was sold therefor and purchased as stated in the bill. Respondent has no knowledge or information
171 touching any agreement among said purchasers. He has no knowledge of the terms except as he has learned from the deed of the clerk to the purchasers. Respondent denies that he was joined in any conspiracy with any of the other defendants to defraud the plaintiff. He denies, so far as he is informed and believes, that there was any conspiracy between any of the defendants to cheat and defraud the plaintiff. Respondent had no interest whatever in the land. The transaction complained of by the plaintiff occurred as follows:

Respondent, until within the last four years, had been a citizen of Pennsylvania, and his codefendants, George Henning and Jno. C. Henning, who resided in said State, were acquaintances of his. They, knowing respondent had removed to and located in Randolph county, in this State, and convenient to said Wilson survey, and claiming under said tax deed nineteen*th*-fortieths of the entire tracts, solicited him as a friend to look to said land and their interest therein. He had from time to time given the property some attention, but he was not authorized by them to sell their interest, nor did he claim to exercise any such power. At the time of the alleged purchase by the Duffners this respondent happened to be in Buckhannon, the county town of said Up-
172 shur county, and on his arrival there he learned that the Duffners had been up the Buckhannon river to examine said tract of land. He did not know the said Duffners, nor had he ever seen them. He had no knowledge whatever of their purpose to

visit Buckhannon, or that they were going to go on said land, nor did he know of them or about them until he happened to meet with them after their return from their examination of said tract of land. Respondent being able to speak the German language, and the said Duffners being Germans, a conversation occur-ed between them, and this land subject came up, and in the course of the conversation the said Duffners, learning respondent was a friend and acquaintance of the said Hennings and had at their instance been giving some attention to the land, displayed a great interest to get the title to said land, and knowing that no person had power to sell said land the said Duffners proposed to respondent that he be engaged to get in the title by deed to said Duffners. This lead to the designation of respondent, D. D. T. Farnsworth, & Jackman Cooper as a committee, and so the so-called contract of purchase was only an offer of said Duffners to purchase the tax title to said land, and they
173 were then informed that the parties claiming the said tax title would only convey such title as they had under the tax deed with assurance as to quantity not held by settlers, &c. The said Duffners, not being able to secure the title by any contract at that time, made an offer for it and secured the services of this respondent, said Farnsworth, and Cooper to negotiate for the said tax title. The said Farnsworth told said Duffners at that time that the owners would only sell such title as they obtained by the tax deed. The offer was then made by the Duffners to give $15,000 for the land if deed could be procured. The Duffners then offered respondent, Farnsworth, & Cooper the said $1,500 to get a conveyance to them, which respondent declined, & then informed them he would not try to get it unless paid for it; that he had spent much time and money in going to Pennsylvania to see the Hennings about the land. Respondent then had some conversation with said Duffners in German, and then they agreed to add $5,000 to respondent to secure the deed, which made $6,500 to respondent to secure the deed, but if he failed in securing the deed nothing was to be paid to respondent. Respondent then proposed to let said Farnsworth have one-
174 half of the $6,500 if he would assist in securing the deed. The Duffners then gave their obligation to that effect, and the same was after and separate and apart from the alleged contract of purchase, but in truth only an offer, for the paper evidencing the same was only signed by the Duffners. It is not true that $20,000 was the price of the land agreed to by said Duffners, but they only proposed to pay, as expressed in alleged contract, $15,000.

Respondent further says that some time in July, 1883, said complainant and his attorney, Mr. Fish, came to said town of Buckhannon to examine the records, books, &c., in the office of the clerk of the county court, and said Fish declared he was satisfied; that he was satisfied the title was all right and as represented, and deed was then received. Respondent went with complainant and said Fish as they returned to Cleveland, and complainant then paid respondent his services in procuring the deed, but quite a discount was made, as it was then paid before the respondent's part was due. Respondent needed money, & the discount was submitted to. Re-

spondent travelling at the time stated to Cleveland with complainant and the said Mr. Fish, they were detained several hours
175 in Wheeling, and during their stay there the said Fish stated he wished to make a further examination touching the said land, taxes, sale, &c., in the auditor's office, and respondent proposed to show him the building in which the auditor's office was kept, and so conducted him to the door of the building, and said Fish went in and remained some time, and afterward said Fish informed this respondent and complainant that he had found a correspondence in the records in that office and in the records in Upshur county. Respondent will here state that he advised the said complainant to have records touching said tax title examined. He is a plain German farmer, and did not make any representations touching the matter except it was a tax title.

Respondent has no knowledge touching alleged interferances of other tracts of land with said Wilson survey, & therefore cannot answer in respect to the same and cannot admit the allegations of the bill to be true, and, if proper matter to be stated and considered, he calls for proof.

Respondent denies that he represented to said Duffners
176 that the title to said land was a valid and perfect title, or that the said deed made to said Duffners would convey a valid and perfect title to said land, nor were any such representations made by him & said Farnsworth & Cooper to said Duffners or by either of them in the hearing of this respondent. He denies that he knew the said title under said tax deed was worthless, nor does he now know that it is worthless. He denies that he conspired and associated with said Farnsworth and Cooper or any others to "defraud and deceive into believing in the validity of said title or into purchasing the same whomsoever they could deceive and defraud." He denies that he or he and said Farnsworth and Cooper represented to said Duffners that a deed made by the persons who afterwards executed the deed to them would convey a valid and perfect title to said land, except such portions of the same as had been held by actual settlers who had possession for more than ten years under claim of title. Some statements were made that there were probably twenty thousand acres not so occupied by such settlers. This subject was stipulated for in the alleged contract and is pro-
177 vided for in the deed to said Duffners. He denies that he and said Farnsworth & Cooper or that he himself — to induce the said Duffners to believe any representations made to them by either, or that any representations were made to induce such belief; upon the contrary, the said Duffners were invited to have investigation of title made. He denies that he or he and said Farnsworth and Cooper together or otherwise, as far as he knows, used or employed any means to prevent the said Duffners from obtaining from other sources information with reference to the invalidity, if any, of the title, or that he and said Farnsworth and Cooper induced the said Duffners "to go through the farce of making a troublesome and expensive trip & journey to view and inspect said tract of land. Respondent will here say they made the journey aforesaid and had

completed and returned from their examination of said land before this respondent had ever heard of them and before he ever saw them.

Respondent denies that the said alleged committee ever represented to said Duffners that two of their number were entitled to receive five thousand of said alleged twenty thousand dollars,
178 and that the other owners were to receive the remaining fifteen thousand dollars, or that the five thousand was to be set apart to said Farnsworth and this respondent because of th-ir services as members of said committee. Respondent admits that at time said Duffners signed said alleged contract the complainant did pay $100. He denies that he or otherwise as a member of said committee or that said committee made or repeated in the town of Buckhannon any of the alleged, imputed, and charged representations to complainant and his said attorney, or that they by any means induced said attorney and complainant to believe in the validity of the said title or used any means to prevent complainant and his said attorney from enquiring about or examining into the title to said land or from ascertaining the vices therein, if any. He denies that said attorney did not investigate the title. Respondent will here state that said attorney did make a protracted investigation of the title, and he was invited to make a full and satisfactory examination by respondent, said Farnsworth, and others. Respondent denies that he or he and said Farnsworth represented to complainant that some of the other persons interested in said
179 tract of land were dissatisfied with the sale to complainant and were unwilling to sign a deed to him. It is true only to the extent, as respondent is informed, that it may have been stated that some did object to making the deed to complainant, as all the Duffners by said alleged contract had stipulated therein that deed should be made to the three Duffners. He denies that he represented to complainant or that he and said Farnsworth together represented that it would require peculiar efforts on their part to induce others to execute said deed. They may have stated they would be compelled to visit other persons to execute the deed, but he denies that they stated or suggested they would have to exercise the influence necessary to induce them to sign said deed, or that said complainant should pay them fifteen hundred dollars for such services, to be equally divided between them.

He denies that the notes for $3,250 which complainant executed to respondent and said Farnsworth were composed of five thousand dollars, a portion of the purchase-money. As to said Jackman Cooper's interest in compensation for procuring deed, the said
180 Cooper never undertook to really *to* act in the matter of securing the deed, except to a very small extent, and for this he was paid, as respondent was informed & believes. Respondent has here made full answer to all the allegations of the bill of the complainant touching matters of which he has knowledge and is able to answer unto, &, not being able to answer unto other matters therein, he denies the same and calls for proof thereof, if material.

Respondent, having answered, prays to be hence dismissed with his costs unjustly imposed.

PHILLIP THOMAS.

JNO. BRANNON,
Att'y for Thomas.

STATE OF WEST VIRGINIA, *Upshur County,* } *To wit:*

I, Philip Thomas, a defendant named in the foregoing answer, say that the facts and allegations therein contained are true, except so far as therein stated to be on information, and so far as therein stated to be on information he believes them to be true.

PHILLIP THOMAS.

Taken, sworn, and subscribed to before me, a notary public
181 of Upshur county, this 8th day of June, 1886, and certified under my hand and official seal.

[Seal G. A. Newlon, Notary Public, Upshur Co., W. Va.]

G. A. NEWLON,
Notary Public of Upshur County.

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth & others. Answer of Philip Thomas. Filed in the clerk's office June 14th, 1886. Test: Jasper Y. Moore, clerk.

182 *Answer of Wm. H. Westfall, &c.*

And upon another day, to wit, on the 14th day of June, 1886, came the defendant Wm. H. Westfall, and, by his counsel, filed in the clerk's office of our said court his separate answer (in his own right and — ex'r, &c.), which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The seperate answer of William H. Westfall, in his own right & as heir or devisee of Henry F. Westfall, deceased, and as executor of the will of the said Henry F. Westfall, deceased, to a bill filed in said court by Joseph Duffner against him and others.

Respondent — at the times of the transactions alleged in the bill of the plaintiff he was and still is a citizen of the State of Texas, and knows nothing of the transactions alleged in the bill of the plaintiff or about the matters of the allegations, charges, & statements in the said bill, and therefore cannot answer unto the same, and, if
183 material to his interest in his own right as such heir or devisee or as such executor he calls for full proof thereof.

Respondent, having answered, prays to be hence dismissed with his costs.

W. H. WESTFALL, *Ex'r.*

JNO. BRANNON,
Att'y for Respondent.

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth & others. Answer of Dr. Wm. H. Westfall. Filed in the clerk's office June 14th, 1886. Teste: Jasper Y. Moore, clerk.

184 *Answer of Philip Reger.*

And upon another day, to wit, on the 14th day of June, 1886, came the defendant Philip Reger, and by his counsel filed in the clerk's office of our said court his separate answer, which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The seperate answer of Philip Reger to a bill filed in said court by Joseph Duffner against respondent and others.

To Hon. J. J. Jackson, judge of said court:

Respondent is informed and beleives there is a tract of land in the counties of Upshur, Webster, & Randolph known as the "Thomas Wilson survey." It is true it was charged in Upshur county with taxes, probably in name of Wm. H. Morton; was returned delinquent for non-payment thereof and sold by sheriff of Upshur county for delinquent taxes, as stated in the bill of
185 complaint, and was purchased by the parties named in the bill. It is true it was conveyed by the clerk of the county court of Upshur, as stated in said bill. Respondent has no information about the agreement between said purchasers or of the contract alleged to be in writing, called in the bill "Exhibit A." Respondent was not, in fact, at time of sale, one of the purchasers. His codefendant, Valentine Strader, after the sale asked this respondent to take one-half of the one share or one-half of one-fortieth of the whole tract purchased, and respondent paid one-half of the alleged part which said Strader was to pay for his part of said tax purchased. Respondent is on this day for the first time informed that he is embraced as one of the purchasers in report of sale by the sheriff. He never signed the said paper marked "Exhibit A," so conspicuously relied on in bill of complaint as one of the "pointers" and indicia of fraudulent purpose in making said tax purchase. Respondent denies that he was acquainted with the previous history of the Morton title to said land, or that he knew that Morton had no title to said land, or that the purchasers were acquiring none by said
186 purchase, or that he was acquainted with the particulars or other vices, if any, in said title. Respondent had no information touching the matter of title. Respondent denies that said de-

fendants, Thomas, D. D. T. Farnsworth, and Cooper, ever were, with his consent or knowledge, a committee of three "to represent and act" for "him" in the sale of said land. He denies that said Thomas was ever, with his knowledge or consent, joined in any conspiracy to represent and act for him. Respondent did not know and had not, at the time of said alleged sale, heard of him. Respondent denies that it was from the first the purpose of respondent and does not believe it was the intention of any of said tax purchasers to sell their title to whomsoever they could thereafter defraud into buying the same and deceive into believing that said title was valid. He denies that he at all times knew that said title was utterly worthless, or that he knew "the worthlessness" of said title which had been acquired, nor does he know now anything in respect to said title. He has not the necessary information and knowledge to enable him to form an opinion in respect to the title. He denies that he ever associated himself with nor does he be-
187 lieve any association was formed to defraud and to deceive into believing in the validity of said title and into purchasing the same whomsoever they could deceive and defraud. Respondent denounces these charges as to himself as utterly false. Respondent has no knowledge of any committee who acted in the alleged contract of sale to the Duffners. No committee ever had any authority to act for him. Respondent had no knowledge or information of alleged contract with the Duffners in April, 1883, until after considerable time from the time the complainant alleges he made said alleged contract. When he did learn of it he was informed that it was only an offer by said Duffners to purchase, and the sum of money they proposed to pay. Some time after this respondent executed the deed to said Duffners on his part. Respondent denies that he ever entered into any conspiracy to deceive, cheat, or defraud the said Duffners. He denies that any person was ever authorized or empowered to act for him in respect to any sale of said land, or that any one was authorized to make any representations in respect to said land, the title, or to sell the same. He had
188 but a small interest therein, and he supposed if any wished to purchase they would examine the title.

Respondent will here state that, being a farmer, residing several miles from the town of Buckhannon, he happened to have business in said town at the time the plaintiff and his counsel, Wm. Fish, were there to investigate the title to said land, and respondent entered the office of the clerk of the county court & found the said Fish examining the books & records. Respondent had learned that said Fish had been so previously engaged. The said Fish remarked to the complainant in substance as follows: "Mr. Duffner, I find everything right about this matter and just as these gentleman had represented, and you can take the deed." At the conclusion of these remarks of the said Fish to complainant Col. Henry Westfall, one of the owners of said tax title, remarked in substance as follows: "Gentleman, we want you to examine until you are entirely satisfied, for some people call it a wild-cat title, and we do not want any after-claps," or words to that import and meaning.

189 Respondent has answered all the matters and allegations of the bill of the complainant of which he has any knowledge, and, as to matters not answered, he denies the same, and, if material, he calls for proof.

Respondent, having answered, prays to be hence dismissed with his costs unjustly imposed.

PHILIP REGER.

JNO. BRANNON,
Att'y for Reger.

STATE OF WEST VIRGINIA, } *To wit:*
Upshur County, }

I, Philip Reger, a defendant named in the foregoing answer, being duly sworn, say that the facts and allegation therein contained are true, except so far as they are therein stated to be on information, and so far as they are therein stated to be on information he believes them to be true.

PHILIP REGER.

Taken, sworn to, and subscribed before me, a notary public for said county of Upshur, on this 8th day of June, 1886, and the same is here so certified by me under my official seal.

[Seal G. A. Newlon, Notary Public, Upshur Co., W. Va.]

G. A. NEWLON,
190 *Notary Public of Upshur County, West Va.*

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth and others. Answer of Philip Reger. Filed in the clerk's office June 14th, 1886. Test: Jasper Y. Moore, clerk.

191 *Answer of John A. Crislip.*

And upon another day, to wit, on the 14th day of June, 1886, came the defendant John A. Crislip, and, by his counsel, filed in the clerk's office of our said court his separate answer, which answer is in the words and figures following, to wit:

In the District Court of the United States for the District of West Virginia.

The answer of John A. Crislip to a bill filed in said court by Joseph Duffner against said respondent and others.

To Hon. J. J. Jackson, judge of said court:

Respondent, answering said bill or such parts thereof as he is able to answer unto, says that it is true there is a tract of land in the counties named known as the Thomas Wilson survey, and granted by the Commonwealth of Virginia at an early day to said Wilson as forty thousand acres, as respondent is informed. It is

true the said tract of land was charged with taxes to Wm. H. Morton, was returned delinquent therefor, sold therefor, and pur-
192 chased at the sheriff's sale for delinquent taxes, as stated in the bill of the complainant.

Respondent admits that his name does appear to an agreement mentioned in said bill as "Exhibit A," but denies that prior to said sale he entered into any agreement with the purchasers in respect to said alleged agreement. He never heard of it until on or about the 24th of February, 1879, and the 11th day of December, 1877, is not the true date of the signing of the same by respondent. He bel*ei*ves the 24th day of February, 1879, is the time when he signed it, from the circumstance of the acknowledgment of it, and he bel*ei*ves that is the day he signed it. He therefore denies that on the 11th day of December, 1877, or that on any previous day he ever entered into said agreement or any other agreement intended to be suggested by said bill as a pointer to these alleged meditated and planned fraudulent purposes.

Respondent, to furth*u*r repel the charge of the then alleged meditated fraudulent intent, says that at the time when said delinquent sales were being made Col. Westfall, an aged surveyor of this county, familiar with lands in it, remarked in the hearing of
193 respondent that he bel*ei*ved it would prove good to the purchasers, that the tract of 40,000 — was charged to Morton and was not on books charged with taxes to any other person. This was on the day of sale. Again, the sheriff who was selling said lands remarked that it would be a good investment to purchase it; that he would purchase if the law permitted him. Upon these statements and upon information then and there, on the day of said sale and not before, he agreed in good faith at a sale by the State to take one share in said purchase.

This appears to be one day after date of said agreement. Respondent denies "that at time of making of the said purchase" he was acquainted with the previous history of the title of said Morton to said tract of land, or that he knew that said Morton had no title to same, or that he with his copurchasers were acquiring none by said purchase, and he denies that he was acquainted with the particular vices or any other vices in said title, if any. He had only such knowledge as is stated hereinbefore and none other, nor did he possess the experience, knowledge, or information to learn more of it than he did from the information hereinbefore
194 stated. It is true the deed was made by the clerk, as stated in said bill, and was recorded as stated therein.

It is true J. Earl Newlon and wife did convey the interest of said Newlon to respondent and J. J. Farnsworth, as stated in said bill, by deed of 8th day of July, 1879. Respondent then, after the lapse of nineteen months after tax sale, bought this interest of said Newlon, paid his money, and took his deed in good faith, bel*ei*ving the title to be good. He will here state, from information and belief, he still believes it to be good. He from information states that said land, prior to said sale in 1877, had in former years been charged with taxes to Thomas Wilson, sold by sheriff therefor, and pur-

chased by State, and not redeemed, and thereafter sold, as stated, in name of Morton. Respondent will here say that no committee with his consent was ever formed or agreed to by his consent to act for him in respect to said land or to sell his interest therein. It may be true that, as the matter required attention, it was understood that some of the purchasers, who resided in Buckhannon, should give more particular attention than others, but no one nor any committee was ever authorized or empowered to sell said land. He
195 denies that defendant Philip Thomas was ever with his consent joined with defendants Farnsworth and Cooper in any conspiracy to defraud the complainant, or that they were empowered by this respondent to represent and act for him in the sale of said tract of land.

He denies "that it was from the first the intention" of this respondent to sell his interest and title in said land to whomsoever he could thereafter defraud into believing that said title was valid, or that he knew that said title was utterly worthless, or that he, well knowing the worthlessness of said title so acquired, conspired and associated with any one or others to defraud and deceive into believing in the validity of said title or into purchasing the same whomsoever they could deceive and defraud.

Respondent denies that he knew he had no title to said land, or that he knew he had no valid title to said land. He denies that he at any time knew there were not as much as twenty thousand acres of said tract which had not been held for ten years by actual settlers with claim of title. He believes from information there is more than 20,000 acres not so occupied. As to this, however, a
196 stipulation therefor is in the deed with adequate remedy, as respondent is informed, by action at law.

Respondent denies that it was notorious in the county of Upshur at the time of the alleged sale of said land to said Duffners that the title so sold was invalid or worthless. He denies that he made efforts or in any manner tried to keep from complainant a knowledge of the title or to keep from him in any manner a knowledge that the title was invalid or worthless, and as to the particular defect alleged against the title resulting from alleged failure of the clerk to note or record report of sale by sheriff of delinquent lands. Respondent knew nothing of said alleged defect, if it is a defect, by the record until after the trial at law of complainant against defendants, and so therefore it is not reasonable he would use a precaution against the discovery of an alleged fact that he had not heard of and knew nothing about. Again, this matter of defect, if it exists, which this defendant upon information denies, was open to inspection of the record, and as to this respondent is informed it was examined by the selected counsel of the complainant
197 months after the alleged purchase by complainant, but before its completion and payment of purchase-money by complainant.

Respondent knows nothing of the alleged fraudulent papers to Morton, Howard, and others. He knows the land was charged on the books with taxes to Morton, and for some years not charged with

taxes in any other name; that it was returned delinquent in name of Morton, and sold as delinquent land in his name, and purchased by respondent and others, and he is informed and believes, this being so, he and his copurchasers obtained the title to the said "Wilson survey."

Respondent has no knowledge or information of alleged interfering surveys or whether such interferances actually exists, whether, if they interfere and lap on the "Wilson survey," they are older than it or not, or whether forfeited or not.

Respondent admits he received his proper share of the fifteen thousand dollars purchase-money paid by complainant.

Respondent here says he knows nothing, of his own knowledge, of the alleged purchase by the Duffners in April, 1883. He
198 had not then heard of them, and knew nothing whatever of the alleged transaction touching said alleged purchase in April, 1883.

He was not in Buckhannon at that time. When he returned, some time after that time, he was informed the Duffners had made an offer for said land. Respondent hesitated, and did not for considerable time agree to sell such title as he had acquired to the Duffners, but finally did so. He never saw the Duffners, except the complainant, whom he saw some months after April, 1883. Respondent was not in Buckhannon at the time it is alleged the complainant and his counsel, Mr. Fish, visited that place to investigate the title, and therefore cannot answer the allegations of the bill in respect to what is alleged in said bill as having then occur-ed. He is informed it is not true, and therefore denies that no examination or investigation was then had of the title. He is informed a thorough investigation was made by said Fish; and, further, that complainant and said Fish were invited by other parties in interest to make a full investigation.

199 Respondent has, by this his answer, answered all the allegations of the said bill which he is able to answer unto, and he here denies all charges of fraud, deceit, or intentional fraud and deceit charged or imputed, and, having answered, prays to be hence dismissed with his costs most unjustly imposed.

JOHN A. CRISLIP.

JNO. BRANNON,
Att'y for Crislip.

STATE OF WEST VIRGINIA, *Upshur County,* } *To wit:*

I, John A. Crislip, defendant named in the foregoing answer, being duly sworn, say that the facts and allegations therein contained are true except so far as they are therein stated to be on information, and so far as they are therein stated to be on information he believes them to be true.

JOHN A. CRISLIP.

Taken, sworn, and subscribed to before me, a notary public for

said county of Upshur, this — day of June, 1886, and it is so certified under my hand and official seal.

J. M. BRAKE,
Notary Public, Upshur County.

200 [Seal J. M. Brake, Notary Public, Upshur Co., W. Va., U. S. A.]

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth & others. Answer of Jno. A. Crislip. Filed in the clerk's office June 14th, 1886. Test: Jasper Y. Moore, clerk.

201 *Decree of Sept. 2nd*, 1886.

And upon another day, to wit, on the 2nd day of September, 1886, the following order and decree was entered, to wit:

JOSEPH DUFFNER
vs.
D. D. T. FARNSWORTH & Others. } In Chancery.

The defendants, D. D. T. Farnsworth, A. M. Smith, W. D. Farnsworth, Wm. H. Westfall, L. S. S. Farnsworth, Philip Reger, Cyrus Hinkle, Philip Thomas, John A. Crislip, — Valentine Strader, this day, by leave of the court, filed separate answers to the complainant's bill.

202 *Auditor's Certificate. Filed Feb. 25th*, 1887.

STATE OF WEST VIRGINIA,
County of Upshur, } *ss:*

I, C. C. F. McWhorter, clerk of the county court of said county, do certify that a tract of forty thousand acres of land was duly entered on the assessor's land books of the second assessment district of Upshur county for the year- 1874 & 1875 in the name of Thomas Wilson for the purpose of taxation, and that the taxes for State, county, & district purposes for said years 1874 & 1875 were duly entered and extended thereon by said assessor, and that said tract or survey of 40,000 acres of land was not entered nor charged for said years 1874 & 1875 in the name of any other person or persons on the assessor's land books of either of the assessment districts of said county; and I further certify that the said tract or survey of 40,000 acres, so charged on said books in the name of Thomas Wilson, was drop-ed from said books in the year 1876 by reason of its having been sold on the 11th day of Oct., 1875, by the sheriff of said
203 *of said* county for the non-payment of the taxes due thereon for the year 1874 and purchased by the State of West Virginia at such sale; and I further certify that on the 10th day of Dec., 1877, said tract of 40,000 acres of land was again resold by the sheriff of said county for the non-payment of the taxes due thereon for the year 1875 and again purchased by the State of West Virginia.

Given under my hand this 16 day of February, 1887.

C. C. F. McWHORTER, *Clerk.*

Endorsed as follows: Veritas No. 1.

204 STATE OF WEST VIRGINIA, } ss:
County of Upshur, }

I, C. C. F. McWhorter, clerk of the county court of said county, do certify that a tract of forty thousand acres of land was duly entered on the assessor's land books of the first assessment district of said county for the year 1876 in the name of William H. Morton for the purposes of taxation, and that the taxes for State, county, and district purposes for said year 1876 were duly entered and extended thereon by said assessor, and that said tract or survey of 40,000 acres of land was not entered nor charged with taxes for said year 1876 in the name of any other person or persons on assessor's land books of either of the assessment districts of said county.

Given under my hand this 16th day — February, 1887.

C. C. F. McWHORTER, *Clerk.*

Endorsed as follows: Veritas No. 3.

205 STATE OF WEST VIRGINIA:

AUDITOR'S OFFICE, CHARLESTON.

I, P. F. Duffy, auditor of the State of West Virginia, do certify that it appears from the assessor's land book of the county of Upshur, on file in my office, for the year 1875 that there is entered therein and charged therein with State, State school tax, county and district taxes a tract of land of 40,000 acres in the name of Thomas Wilson, the said taxes amounting to $\$440\frac{00}{100}$; that it further appears in this office, from a list of land returned delinquent for the non-payment of taxes for the year 1875, that said land was returned delinquent for said taxes for said year; that it further appears in this office from a return of sales of delinquent lands in the year 1877 by the sheriff of said county that said tract of land was sold for the delin-

206 quent taxes charged as aforesaid to said Thomas Wilson for the year 1875, and was purchased by the State of West Virginia and has not been redeemed. I do further certify that it does not appear from the land assessor's books of said county that the said tract of land of 40,000 acres was charged therein with taxes for said year 1875 to any other person than to Thomas Wilson as afore certified.

Given under my hand this 21st day of Feb'y, 1887.

P. F. DUFFY, *Auditor.*

Endorsed as follows: Duffner *vs.* Farnsworth, &c. Auditor's certificate. Filed Feb'y 25th, 1887. Test: Jasper Y. Moore, clerk D. C. U. S., D. W. Va.

207 STATE OF WEST VIRGINIA:

AUDITOR'S OFFICE, CHARLESTON.

I, P. F. Duffy, auditor of the State of West Virginia, do certify that it appears from the assessor's land book of the county of Upshur, on file in my office, for the year 1876 that there is entered therein

and charged therein with State, State school, county and district taxes for said year 1876 a tract of land of 40,000 acres in the name of William H. Morton, and that said taxes, as appears therefrom, amounted to $481.33; that it further appears from the list of delinquent taxes for said year in said county that said tract of land so charged with said taxes was returned delinquent therefor. I do further certify that it does not appear from the assessor's books of said county for said year 1876 that said tract of land was
208 charged therein for said year 1876 with taxes in the name of any other person than said William H. Morton, as afore certified.

Given under my hand this 21st day of Feb'y, 1887.

P. F. DUFFY, *Auditor.*

Endorsed as follows: Duffner *vs.* Farnsworth, &c. Auditor's certificate. Filed Feb'y 25th, 1887. Test: Jasper Y. Moore, clerk D. C. U. S., D. W. Va.

209 STATE OF WEST VIRGINIA:

AUDITOR'S OFFICE, CHARLESTON.

I, P. F. Duffy, auditor of the State of West Virginia, do certify that it appears from the assessor's land book of the county of Upshur, on file in my office, for the year 1874 that there is entered therein and charged therein with State, State school tax, county and district taxes a tract of land of 40,000 acres in the name of Thomas Wilson, the said taxes amounting to $210; that it further appears in this office from a list of lands returned delinquent for the nonpayment of taxes for the year 1874 that said land was returned delinquent for said taxes for said year; that it further appears in this office from a return of the sales of delinquent lands in the
210 year 1875 by the sheriff of said county that said tract of land was sold for the delinquent taxes charged as aforesaid to Thomas Wilson for the year 1874, and was purchased by the State of West Virginia, and has not been redeemed.

I do further certify that it does not appear from the land assessor's books of said county that said tract of land of 40,000 acres was charged therein with taxes for said year 1874 to any other person than to Thomas Wilson, as afore certified. Given under my hand this 21st day of Feb'y, 1887.

P. F. DUFFY, *Auditor.*

Endorsed as follows: Duffner *vs.* Farnsworth, &c. Auditor's certificate. Filed Feb'y 25th, 1887. Test: Jasper Y. Moore, cl'k D. C. U. S., D. W. Va.

211 *Plaintiff's Depositions.*

And upon another day, to wit, on the 2nd day of March, A. D. 1887, the plaintiff, by leave of the court, filed the following depositions:

Depositions of witnesses taken before me at the clerk's office of the circuit court of Upshur, in Buckhannon, Upshur county, West Virginia, on the 15th day of February, 1887, by consent of parties, to be read as evidence on the hearing of the cause in equity of Joseph Duffner against D. D. T. Farnsworth & others, now pending in the district court of the United States for the district of West Virginia, at Wheeling, on behalf of the plaintiff.

Present: M. T. Frame, counsel for plaintiff, and John Brannon, counsel for defendants who have answered and for Henry C. Koon.

A. J. MARPLE, a witness of lawful age, being by me duly sworn, deposes and says:

212 1st Question. What is your name and what is your age?

Ans. My name is Albert J. Marple, and I will be thirty years old the 19th day of next March.

2nd Q. Are you acquainted with the parties to this suit?

A. I have met Mr. Duffner a few times and am acquainted with some of the defendants.

3rd Q. If you were ever sherif- or deputy sheriff of Upshur county please state what period your term covered.

A. I was deputy sheriff for my father, G. D. Marple, sheriff of Upshur county for the years 1881 to 1884, inclusive.

4th Q. Did you, during that period, have the collection of the taxes on a tract of 40,000 acres of land charged in this county in the name of Henning & Co.?

A. For the years 1881, 1882, & 1883 I had the collection of the taxes on, I think, 20,000 acres of land charged in the name of Henning & Co.

5th Q. Was that 20,000 acres a part of the 40,000 acres known as the Wilson survey?

A. That was my understanding.

213 6th Q. To whom of the owners did you present the bills for payment?

A. I talked to different members of the company about the taxes during the three years. I mentioned the matter to A. B. Clark, H. F. Westfall, D. D. T. Farnsworth, Jackman Cooper, and perhaps others.

7th Q. Did you have any trouble in securing the prompt payment of the bills?

A. I had no special trouble except for the year 1883.

8th Q. Was there any hesitency on the part of the owners to pay for the years 1881 and 1882?

A. I don't remember that there was any hesitency about the tax for 1881. My recollection is that for the year 1882 they were a little slow in getting together.

9th Q. Was there any reason assigned by the owners for their hesitency?

A. I don't remember of any of them assigning any reason except D. D. T. Farnsworth.

10th Q. What did he say?

A. Well, the substance of his remark was something like this: "That some say that there is a question as to our title to that
214 land, and if that be so we do not want to spend any more money on it."

11th Q. Do you remember of seeing the plaintiff when he and his brother and son first visited Buckhannon—when they went to look at the land?

A. I don't now remember of seeing them.

12th Q. Did you see them during the time they were in town?

A. I don't remember.

13th Q. Did you see them in Buckhannon during the negotiation for the land?

A. I saw him in Buckhannon with an attorney by the name of Fish—at the time when the trade was said to have been consum--ated.

14th Q. Did you know anything about the organization of the company that purchased land at tax sale?

A. I did not know anything about the original organization.

15th Q. Were you ever solicited to become a member?

A. No, sir.

16th Q. Will you please state any other matter or circumstance which might show a knowledge on the part of the owners of the defect of their title or that might otherwise be relative to this case?

215 A. I don't know that I know anything more.

Cross-examined:

1st Q. Do you know when it was you had any conversation with D. D. T. Farnsworth in which he stated that some persons say there is a question about title, &c.? And, if so, state when it was.

A. I can't give the exact date. It was some time between the 1st of November, 1882—the time you can distrain for taxes—and the July term of the county —, 1883, at which time the delinquent list-were returned to the court. My impression is that it was in the spring of 1883. The July term of the county court commenced on the 1st Monday.

2nd Q. Did you collect the taxes for the year 1882; and, if so, who paid them?

A. I did. I think I received the payment from the hands of Mr. A. B. Clark *of* Jackman Cooper.

3rd Q. Do you now remember with certainty that the remarks of Mr. Farnsworth, which you have refer-ed to, about the taxes of 1882 were about this particular tract of land or some other tax title in which he was interested?

A. I remember certainly that it was about the tract of land charged to Henning & Co.

216 4th Q. You spoke of Mr. A. B. Clark paying the taxes on this land. Do you know why it was that you called on him for the taxes?

A. I am not sure that he paid the taxes for 1882, but that is my

impression. I suppose the reason I called on — was that I understood that he had the money to pay the taxes for that year.

5th Q. Did not Mr. Farnsworth, in the conversation you refer to about the taxes, refer you to Mr. A. B. Clark to get the taxes?

A. I don't think he did. He said, We will see about it. I don't suppose that Mr. Clark had the money with which to pay the taxes at that time.

And further this deponent saith not.

A. J. MARPLE.

1 h'r, 1 day, 1 certf., 1 spec., 5 copies.

C. C. F. McWHORTER, a witness of lawful age, being by me duly sworn, deposes and says:

1st Q. State your name, occupation, and residence.

A. My name, C. C. F. McWhorter. I am clerk of the county court of Upshur county, and I live in Buckhannon, Upshur county, West Virginia.

2nd Q. Are you acquainted with the parties to this suit?

A. I am acquainted with most of them.

217 3rd Q. State if you saw the defendants about the time they entered into the contract for the purchase at the tax sale of the 40,000 acres sold in the name of Morton.

A. I can't say how many I saw, but I saw several of them at that time.

4th Q. Were you solicited by the parties or any of them to join in that enterprise?

A. I was.

5th Q. Did you assign any reason for declining?

A. I did.

6th Q. State what it was.

A. The reason I assigned was that I had very little confidence in the title.

7th Q. To whom of the parties were you talking?

A. To the best of my recollection, there was only three of — that spoke to me about that: Earle Newlon, Jackman Cooper, and L. S. S. Farnsworth.

8th Q. If there was any special vice pertaining to the title spoken of in that connection please state what it was.

A. My special reasons for doubting the title was I doubted the validity of the deeds on record, from Wilson down to Howard, as they only purported to be copies from the originals. I

218 can't state that I assigned this reason to any one except Mr. Newlon.

9th Q. Do you know whether others of the defendants besides Newlon knew of the defect to which you have refer-ed prior to 1882?

A. I don't know. I never heard them speak of it.

10th Q. Please state any fact or circumstance that you may have learned, by conversation or otherwise, from the defendants showing

a knowledge on their part of any defect in their title prior to their sale to Duffners.

A. I and Henry F. Westfall and Jackman Cooper frequently talked of the matter in my office. They seemed to think that the matter of the validity of those deeds would not be questioned. I always took the ground that there would be trouble about them. Mr. D. D. T. Farnsworth was present at some of these conversations. He was always very sanguine that they had a good title. These matters were talked of both before and after the sale to Duffners.

11th Q. Look at paper-writing here filed as part of your deposition, marked Exhibit A A, and state what it is and who filed the petition which is part of the exhibit.

219 A. It is copy of a petition filed by Henning & Co. before the county court of Upshur county and a copy of the record of the proceeding had in said court on said petition, and the petition was filed by Jackman Cooper.

12th Q. Do you remember the occasion when the Duffners visited Buckhannon first going to look at the land?

A. I don't remember the first visit.

13th Q. Did you see him the second time?

A. I was absent during the time, and the trade was all closed up when I got back.

Cross-examined:

1st Q. You state that in your conversation with H. F. Westfall, Jackman Cooper, and at some time or times when D. D. T. Farnsworth was present that the subject of the defects in deeds which you seemed to consider made a question about the tax title in question. Was not the conclusion of Farnsworth and othe-s that as the said 40,000 acres of land was charged with taxes in the name of Morton for the year for which it was sold and not on said books for said year charged with taxes in the name of any other person that it would make the purchase good and pass the title, although some others than Morton might have the title to said land?

220 A. That was the ground upon which they claimed their title. Henry F. Westfall particularly put it on that ground, and the others seemed to rely upon his opinion.

2nd Q. Who was Henry F. Westfall, and what was his reputation for intel-igence in regard to lands and land titles?

A. He was an old citizen of this county and a man of more than ordinary judgment and sense. He was well posted as to many of the old surveys of the county and well acquainted with the chains of titles thereto. I think he knew more about land titles than any man in the county.

3rd Q. Do you know of a lawyer of New York being here in Buckhannon, in Upshur county, after the tax deed for this land was made to Henning and others? If so, state in what he was engaged when he was here.

A. It was a person by the name of Johns, who said he was from New York or the State of New Jersey, came here after the tax deed was made, who stated that he was here looking after the interests of

some French heirs in 40,000 and 60,000 acres surveys patented to Thomas Wilson. I assisted him in making a thorough search
221 of the records of my office as to the title of said two surveys. After his examination in my office he left, stating he was going to Randolph county to continue his investigation there. He came back in a few days and made further examination in my office. He told me, after he had concluded his examination, that he was disgusted; that he had never found so many niggers in one wood pile in his life. He threatened to sue the members of this company who had the tax title. He represented himself to be a lawyer.

4th Q. Have you examined the assessor's books in your office containing a list of lands in this county charged with taxes for the years 1874 & 1875 to ascertain whether a tract of land of 40,000 acres, about which you have been speaking, was charged with taxes for said years and to see whether the same was delinquent for said taxes and sold for the same? And, if so, state what you have discovered from the records of your office.

(Question objected to, as the record will show for itself.)

A. I have made such an examination and find that said tract of 40,000 acres was entered for the years 1874 and 1875 on said
222 books in the name of Thomas Wilson, and was returned delinquent for non-payment of taxes thereon for said years, and that said tract of land was sold on the 11th day of October, 1875, for the taxes of 1874, and purchased for the State, and that said tract of 40,000 acres was sold on the 10th day of December, 1877, in the name of Thomas Wilson for the taxes of 1875, and purchased for the State.

5th Q. Have you made any certified abstracts or other certificates showing the facts stated in the preceding answer? If so, please file the same.

A. I have, and I now here file the same as part of this deposition, marked Exhibits Veritas No. 1 and Veritas No. 2, respectively.

6th Q. Have you made any examination of the records touching the taxes on said tract of land for 1876; and, if so, can you furnish any certificate of what appears on the land-tax book of your county for the said year?

A. I have made examination, and I here file a certificate, marked Veritas No. 3, as part of this deposition.

7th Q. Have you made any examination to see what amount of taxes appears by the records of your office to have been paid by Geo. Henning & Co. on said land, including the taxes of 1883?

223 (Question objected to as irrelevant.)

A. I have. I find that the taxes extended on the assessor's books for the years 1876 to 1883, inclusive, aggregate the sum of $2,983.82—I don't know who paid the tax—and that said land was charged for the years 1876, '77, & '78 on said books in the name of Wm. H. Morton and for the remainder of said years in the name of Geo. Henning & others.

Redirect examination:

1st Q. You say in your Exhibit No. 3 "that the tract or survey of 40,000 acres of land was not entered nor charged with taxes for the year 1876 in the name of any other person or persons on the assessor's land books of either of the assessment districts of Upshur county." Do you mean to be understood by that that the land in question was not assessed and charged with taxes to other persons for that year other than Morton?

A. I mean that that survey was not entered as a whole or — a body of 40,000 acres in the name of any other person. I have no doubt that the great majority of that land or survey was entered for said — in the names of various persons in smaller tracts who claim under title adverse to the Morton title, under junior and other surveys.

224 2nd Q. What answer would you make to the same question as applied to your exhibit marked Veritas No. 1?

A. I would make the same answer as I have made on No. 3.

3rd Q. You have stated in your cross-examination that Henry F. Westfall was better posted probably on the land titles and tax titles than any man in the county. Do you mean to include the Upshur bar in that statement?

A. As to the knowledge of the chains of titles in the county he knew more about them than all the lawyers in the county; but as to the validity of the titles I presume the bar ought to know more than he did.

4th Q. How will his knowledge compare with the bar as to questions arrising touching the validity of tax titles?

A. As to the statute law of this State I believe he was pretty well posted, but as to the decisions of courts bearing on such questions I don't know.

And further this deponent saith not.

C. C. F. McWHORTER.

G. M. FLEMING, a witness of lawful age, being by me duly sworn, deposes and says:

225 1st Q. State your age and occupation and where you lived in 1883.

A. I am about thirty-nine years old. I am an attorney-at-law, and have been practicing law and living here since in the year 1881.

2nd Q. Are you acquainted with the defendants in this suit?

A. I am.

3rd Q. Were you called upon at any time by any of the defendants who stated that they might want you to report and give an opinion as an attorney upon the title to a tract of 40,000 acres of land then owned by Henning & Co.?

A. I was called upon at my —, in this town, by two of the defendants and had some conversation with them, that I took as addressed to me professionally, relating to a sale that was under

negotiation of the 40,000-acre tract, then owned by these defendants, and which I understand gives rise to the matters involved in this suit.

4th Q. State when that was and who the parties were.

A. It was a short time—that is, from a week to a month or two or three, as near as I can recollect—before the sale by the defendants to Joseph Duffner or to him and others of the said 40,000-acre tract of land. D. D. T. Farnsworth and Phillip Thomas
226 were the parties who called at my office.

5th Q. State fully what that conversation was.

A. I spend so much of my time talking with people about matters that concern them more than myself that I never attempt to give certainly the language that was used any considerable time after or even the substance of what passed. But what was involved in this question was called for at the trial already had between these parties in the U. S. court at Wheeling, which has served to keep the matters before me. D. D. T. Farnsworth and Phillip Thomas came, as I have stated, and told me in effect that they were negotiating a sale of the 40,000 acres owned by themselves and others, and that they expected that the purchasers would want first to enquire into the title, and would want the services of a lawyer here, and that they would send him to me if he enquired for a lawyer. I thanked them, and they made known to me that I was not to look to them or those associated with them for my pay for such service as I might be called upon to perform, but that I was to serve those with whom they were negotiating the purchase and look to them,
227 the purchaser or purchasers, for my pay. They also gave me to understand that, as they were designating me to such other parties, I was to remember them, the defendants, favorably, or something to that effect. I cannot remember any of the words, but it came as one of those pleasant-smiling, friendly reminders, quite as much in manners as in language. In speaking of the defendants in this case I have refer-ed in this and the preceding answer to those who made the sale to Mr. Duffner, including Henry F. Westfall and Jackman Cooper, now both deceased, and not the personal representatives, heirs-at-law, and devisees of such deceased parties.

6th Q. In what particular did they give you to understand you was to remember them?

A. It was my understanding, without any doubt in my own mind at the time, but possibly misunderstanding them, that they did not want any report made or advice given to their expected purchaser or purchasers that would cause them to loose the sale of said land as then being negotiated.

7th Q. What was your answer as to that request? And state if you were employed.

A. I do not know just what I said. It may have been at this stage that I thanked them in answer to this and others and
228 fuller conversation, only the substance of which I have given. I recollect of thinking that fidelity would be due to those who might employ me, and I am not accustomed to saying yes or no

until the occasion for it arrives. I intended to put them off as they put me off, all the more, as I was personally very friendly towards the parties, and would not interfere unless under professional obligation to do so. I was not employed to perform any service by either side.

8th Q. Did you see Mr. Duffner in Buckhannon prior to and at the time of the purchase?

A. I suppose that I did. The matter was of some notoriety at the time, and, if I recollect, I saw Mr. Duffner and his attorney, Mr. Fish. It is that that enables me to locate the time.

9th Q. Did you ever see Duffner, to your recollection, either on his visit with Fish or before that time, when some one of the vendors was not with him?

Ans. At this distance of time I cannot now say with whom I may have seen him. It seems to me that I saw him and Mr. Fish — I across the street from them and they walking towards the court-house. I also met Mr. Duffner face to face, and remember of
229 his looking at me, as his manner is as though he was going to speak. I place the latter meeting across the street from the court-house.

Cross-examined:

1st Q. You speak of Farnsworth and Thomas calling on you at your office and of a conversation they then had with you and you seem to speak of it as having taken place before the purchase by Duffner or while negotiations were pending. State, if you can, whether this was before or after the 24th of April, 1883.

A. I have no means of fixing the time even as to the year or years thereabouts, except as connected with the circumstances preceding and attending the sale or the time I was informed that the sale was made, for that the sale was made is only a matter of information.

2nd Q. Do you know of the defendant D. D. T. Farnsworth going to and returning from Cleveland just before the term of the circuit court when it was expected that a trial of the Smiths would take place?

A. The fact as suggested comes to me as something I may have heard or known, but personally I cannot say that I recollect it.
230 3rd Q. You speak of having seen Mr. Duffner and Mr. Fish in Buckhannon. Now state, if you can, whether the conversation of Farnsworth and Thomas with you in your office was before or after that, and state further whether, in your reference to a contemplated sale by Farnsworth and Thomas, refer-ed to in your answer, it was the transaction had when Duffner and Fish came.

A. Said conversation was before the occasion of my seeing Messrs. Duffner and Fish in Buckhannon, but I associated the two together and think that they were not more than a week or two or three before that time. The contemplated sale was, as I understood at the time, the one that was made by the defendants to Mr. Duffner, or to him and others, at the time when I saw Mr. Fish here, as I have stated.

4th Q. Did you ever have any other conversation with said Farns-

worth and Thomas in respect to serving as suggested in the conversation of which you speak up to the time Fish and Duffner came to Buckhannon?

A. I don't think I ever had.

5th Q. Did the said Farnsworth or Thomas ever, after your conversation referred to with them, call on you to render a service
231 suggested in the conversation had with you in your office?

A. They never did. I did not understand at the time of said conversation that they were to call on me again.

6th Q. You state in a former answer that Farnsworth and Thomas gave you to understand that as they were designating you to other parties that you was to remember them, and you say further that you cannot remember. The words came pleasantly as friendly reminders, quite as much in manner as in language. May you not have misunderstood this part of — transaction or conversation refer-ed to?

A. I may have done so. I have only testified as to the meaning gathered by me from the words, the manner of them, and the object of the visit.

And further this deponent saith not.

G. M. FLEMING.

1 day, 1 certf.

By consent of parties, by counsel, the further taking of these depositions is continued to February 16th, 1887, at 9 o'clock a. m., at the same place as in the caption stated.

Given under my hand this 15th day of February, 1887.

W. G. S. TOTTEN,
Commissioner.

232 FEBRUARY 16TH, 1887.

Present: Same parties as on yesterday.

S. B. PHILLIPS, a witness of lawful age, being by me duly sworn, deposes and says:

1st Q. State your name and residence.

A. Sylvester B. Phillips and I reside in Buckhannon, West Virginia.

2nd Q. How long have you been a resident of Buckhannon?

A. I have resided here since 1862.

3rd Q. Are you acquainted with the individual members — the company known as George Henning & Co. who purchased the 40,000 acres of land known as the Wilson survey?

A. I am acquainted with H. F. Westfall, Jackman Cooper, D. D. T. Farnsworth, W. D. Farnsworth, L. S. S. Farnsworth, J. A. Crislip, P. A. Reger, Valentine Strader, Cyrus Hinkle, H. C. Koon, Louis Munks, Smith, Thomas, and I have met the two Hennings.

4th Q. Do you know Joseph Duffner?

A. I have met Mr. Duffner, but have not much acquaintance with him.

5th Q. Were you approached by either members of Geo. Henning & Co. and solicited to join them in the purchase of the 40,000 acres at the tax sale to be had in this county in 1877?

233 A. No, sir; I think not by any of the members. I think the sheriff did.

6th Q. Did you ever talk with any of the individuals members about this enterprise?

A. Yes, sir; to one of the members, I remember distinctly, prior to the sale to Duffners.

7th Q. What was that conversation?

A. It was with Mr. Thomas, of Beverly. I don't know that he was a member of the company, but he said he was interested in the sale of the land. I met Mr. Thomas at the hotel at Beverly prior to this sale to Duffner. During our conversation he remarked that he was coming to Buckhannon soon, and that he was about to negotiate a sale of this land. I advised him to let that matter alone, as it was regarded here a- rather a wild cat-scheme, and I knew of my own knowledge there were a great many settlers on it, and that part of it was covered by the Davenport survey, and that there was a great many junior entries on it, and a good portion of it settled for many years. He said he was doing it to help his old friends, the Hennings, out of their scrape, as they were old acquaintances of his.

8th Q. Did you talk to him just shortly after the sale about the same?

234 A. I think not, sir.

9th Q. Did you ever ask him why he had done this, refer-ing to making the sale?

A. I think not, sir; I don't remember of having but one conversation with him about it.

10th Q. In relating the conversation you had with Thomas you say that he told you he was coming to Buckhannon, as he was about negotiating a sale of this land. Did he tell you or did you learn to whom he was making the sale?

A. I don't remember. I think he said some parties, some friends, were to meet him here; I don't think he named any one. After he mentioned some friends I told him he ought to be careful about this, as the land was regarded as a wild-cat affair.

11th Q. How long was that before Duffner and Thomas and others met here and made the sale?

A. I do not remember the exact time, but it was not very long until Mr. Thomas came over here and the sale was negotiated.

12th Q. Did Duffner go to look at the land at that time?

A. I think so. Mr. Duffner and a party started to look at it. I don't think that was the time.

235 13th Q. Why did you not join the company of Hennings & Co. in the purchase of this land?

A. Simply because I had known the land almost all my life and knew the land claimed as covered by this Morton survey was partially covered by the Davenport survey; and I had never heard

that this land was covered by the Morton survey until about the time — this tax sale.

14th Q. Do you know of any fact or circumstance connected with this title which shows that the members of Henning & Co. were acquainted with the defects in the title prior to or at the time of the sale to Duffner? If so, state what they were.

A. I don't remember of any. The matter was talked about here generally as a wild-cat scheme. I have no personal knowledge that any member of the company heard the rumor that I heard talked about.

15th Q. Did you see Joseph Duffner in Buckhannon at each of the two visits he made here?

A. Yes; I remember of seeing him.

16th Q. Who was usually in his company?

A. I saw him with the party when they left the hotel to look at the land, and I saw him with members of the company, and
236 I remember of seeing him in the clerk's office with an attorney and some of the company.

17th Q. Was the presence of the members of the company with Duffner of such character as to excite comment?

A. I must say that I heard quite a number of remarks made about the matter; I remember of hearing Wm. C. Carper mention it and C. E. Mylins several times.

18th Q. What was the object of the prompt attention given by the members of the company to Mr. Duffner, as understood and expressed by those who witnessed it?

(Question objected to.)

A. (Question withdrawn by pl'ff.)

19th Q. What was the object of the prompt attention given by the members of the company to Mr. Duffner as you understood it?

A. That they wanted to make a sale.

20th Q. What were the character of the remarks made by Mr. Carper and Mylens about the attention shown by the members of the company to Mr. Duffner?

(Question objected to by def'ts, because he undertakes to give impressions of others and because if they spoke of any fact they should be introduced to prove the same; otherwise the statement by this witness would be hearsay.)

(The question is withdrawn by pl'ff.)

237 Cross-examined:

1st Q. You speak of having seen Duffner and others go to see the land and seeing some of the members of the company with him at that time. Do I understand you to say or mean that any of the company went with Duffner to see and view the land? And, if so, state who of the company.

A. I could not say that I saw any of the company go with Duffner to see the land; I think I saw Watson Westfall go, and I think Mr. Duffner's son-in-law.

2nd Q. You speak of Duffner's son-in-law and Watson Westfall going with Duffner to see the land. Now state whether that was not after Mr. Fish, the attorney for Duffner, had been here and the whole matter closed up.

A. Since thinking over the matter I think it was.

3rd Q. You have spoken of interferences of the Davenport survey with the 40,000-acre tract, and that you mentioned this matter to Thomas at Beverly. State if you know the extent of the interference of the Davenport with it, and state, if you know, if it is not a fact that the patent to Thomas Wilson for the 40,000 acres is

238 older than the patent of the Davenport survey.

A. As to the interferences of the Davenport survey, I got that from Henry F. Westfall. He said it was about 40,000 acres. As to the dates of patents, I don't know anything about that.

4th Q. Do you own or claim any land yourself inside of this Thomas Wilson survey?

A. I don't know where the lines of the Thomas Wilson survey runs, but I don't own any land in that country.

And further this deponent saith not.

S. B. PHILLIPS.

N. M. FERRELL, a witness of lawful age, being by me duly sworn, deposes and says:

1st Q. State your name, residence, and occupation, 1883.

A. My name is N. M. Ferrell; I reside in Buckhannon, West Virginia, and kept hotel in 1883.

2nd Q. State when and the circumstances under which you became acquainted with Joseph Duffner, of the city of Cleveland.

A. It was at the time he and his brother came to look at the 40,000 acres of land he bought of Henning & Co.

3rd Q. Did they stop at your hotel?

A. Yes, sir.

239 4th Q. What occurred when they came to your house?

A. They stayed there all night and were making arrangements to go up and look at the survey. Some one—I don't know who—had told them that Col. Watson Westfall would be a good one to go with them to show them the survey, and near dark the Col. came along. I stop-ed him and took him into their room and gave him an introduction to them. I went out of the room. I don't know what they did. He agreed to go, I rec-on. He went with them, anyhow.

5th Q. State, if you know, whether Maj. D. D. T. Farnsworth came there that night to see the parties and the circumstances under which he came.

A. I am not positive about —, but I am under the impression that he was there. He was there the next morning, I know.

6th Q. Did Phillip Thomas come to your house while the parties were out looking at the land?

A. Yes; he came on Sunday evening. The Duffners left there Saturday morning.

7th Q. During the time Duffner was at your house on his first and second visit what part of the business hours was he left to himself without the presence of some one of the members of Henning & Co.?

240 A. I could not say as to that. I was busy attending to the house and could not say that they were there all the time. They were going and coming pretty much all the time.

8th Q. Was the presence of the members of Henning & Co. with Duffner such as to attract your attention to the fact?

A. They were with him most of the time, I noticed—with him on the street and coming to his room.

9th Q. Who were the ones who gave him most attention?

A. Thomas was there. He came and inquired if Capt. Woods and his party from Cleveland had come. I recollect Woods was drunk. Thomas said, "A drunken dog." He was to have gone with them to look at the land. He said he had met Woods in Beverly. He did not drink anything there, and he said he did not know he was a man that drank. He said that Woods was a real-estate agent.

10th Q. Did you learn from Thomas how he knew Woods and his party was in Buckhannon?

A. No, sir; I did not, that I recollect.

Cross-examined:

1st Q. You speak of Joseph Duffner and his brother coming to your house when they first came to look at the land. State whether there were any other persons came with them, and who.

241 A. Mr. Duffner's son was along, and Capt. Woods.

2nd Q. State, if you know, who all went with the Duffners to look at the land.

A. The three Duffners, Col. Westfall, and Bob Rodgers, the hack-driver.

3rd Q. You state, in a former answer, that you have an impression, but not certain, that D. D. T. Farnsworth was at your house with these men on the night of the day they first arrived at your house, but that he was there the next morning with them. Now state whether you are not wholly mistaken about the said Farnsworth being there at either of the times you have stated, and was not the said Farnsworth called for by them on their return from looking at the land, and that then it was you saw the said Farnsworth with them?

A. I am not mistaken about his being there the next morning, but I am not certain about that night.

4th Q. Did you see the said Farnsworth in company with or in conversation with them on the morning you refer to, being the morning of the day they left to look at the land?

A. I can't say that I can; he came along there while they were bustling around, fixing to get off. Mr. Farnsworth, in com-

242 ing from his residence into town, would have to come by my house.

5th Q. Do you know that after the said Duffner and his party

returned from their trip, after looking at the land, that he or his party stated that they wanted to see the said Farnsworth, and that the said Farnsworth was then sent for, and that your son carried their message to him?

A. No, sir. I don't know that; my son says he went, but I don't know at whose instance he went.

Redirect examination:

1st Q. State if, on the morning when the partis started to go and see the land, Maj. Farnsworth give directions as to the route to travel.

A. I don't know; there was a good many around giving directions, and I can't say whether he did or not. On the evening before they were to go around by Col. Westfall's, but in the morning it was changed, and they went up this side.

And further this deponent saith not.

N. M. FERRELL.

CHARLES E. MYLINS, a witness of lawful age, being by me duly sworn, deposes and says:

1st Q. State your name and residence in 1883.

243 A. My name is Charles E. Mylins, and I resided in Buckhannon, Upshur county, West Virginia, in 1883.

2nd Q. Were you acquainted with the formation of the association known as Geo. Henning & Co., formed for the purchase of a tract of 40,000 acres of land sold for taxes in the name of Morton in 1877?

A. I heard of it at the time of the sale.

3rd Q. Were you solicited to become a member?

A. I was.

4th Q. By whom?

A. By the deputy sheriff, G. A. Newlon.

5th Q. Did you talk with any of the members about it?

A. I don't think I did. I may have done so. Newlon told me he had taken a share in it, and I think he sold out to his brother.

6th Q. Did you talk to either member of the company at the time of or prior to their sale to Duffner touching the validity or invalidity of their title to said tract of land?

A. I did prior to the sale.

7th Q. With whom?

A. Mr. D. D. T. Farnsworth, in the presence of some parties from Pennsylvania. They asked me my opinion, and I told them I had no faith in the validity of their title.

244 8th Q. Did you ever have any conversation with Thomas, of Randolph county, touching the validity or invalidity of this title prior to the final consum-ation of the sale?

A. I did.

9th Q. State that conversation, please.

A. He asked me what I thought about the validity of the title, and

I told him I didn't know for certain. I had never examined, but that I had no faith in it. This was some — before the sale was made to Duffner.

10th Q. If Thomas ever gave you any reason for trying to dispose of this title state what it was.

A. He stated that he had some friends in Pennsylvania and he would like to dispose of it for them. They had made him their agent to look to their interests.

11th Q. If he spoke to you about being anxious to help his friends out of the scrape by a sale of the land state his language as nearly as you can.

(Question objected to because it is hypothetical and suggestive.)

A. From all his conversation he seemed to have faith in the title. He did not seem to think his friends were in a scrape or anything. He asked me to help him in making sale of it, and I told him I would not have anything to do with it. I had no faith
245 in it and would not like to work for nothing. He said that if not all the land a part of it might be got.

12th Q. What experience, if any, have you had in West Virginia land titles and what period of time is covered by such experience?

A. I have had a fair average experience in land titles in this section of the country for the last fifteen years.

13th Q. Were you in Buckhannon when Duffner first came here to look at the land?

A. Yes. I was sick in bed. It must have been in April, 1883. Mr. Duffner came down to my house. I have no recollection of seeing him before. There were one or two along with Mr. Duffner, and I think Mr. Farnsworth was along.

14th Q. Did you see him in Buckhannon in July of the same year?

A. I think I did. I saw him afterwards, the same summer, in company with Mr. Fish, from Cleveland.

15th Q. While in Buckhannon did you see Duffner usually in company with some members of the company while on the streets and about town?

A. I was not able to walk. I think I saw him but once on
246 the street in company with Mr. Fish, and I don't remember of any one else being with him. Mr. Fish made an impression on me because I was introduced to him by Mr. Duffner.

Cross-examination:

1st Q. You speak of having stated to D. D. T. Farnsworth and some gentlemen from Pennsylvania in company with him that you had no confidence in the title to the land in question then claimed by Henning & Co. State if you remember whether the said Farnsworth, after your statement, had expressed confidence in the title.

A. There were three or four parties there from Pennsylvania.

They wanted to form a company & wanted me to go into it & form a company of about six, as well as I recollect. Mr. Farnsworth had confidence in the title. The new company would have bought out the balance of the company, and Mr. Farnsworth was willing to invest his money in it, and in the company he would have had one-sixth interest, where he had only one-fortieth in the old company. Mr. Farnsworth still expressed confidence in the title after I said I had no faith in it.

2nd Q. Were the people you refer to from Pennsylvania with whom you had this conversation in connection with Mr. Farnsworth
247 the Hennings or either of them?

A. No, sir.

3rd Q. Did you ever make or caused to be made any investigation touching the validity of the tax deed to Henning and others?

A. I did not.

4th Q. Did you ever remark to S. B. Phillips or in his presence that at the time Joseph Duffner, brother, and son were here to look after the land in question or at any other time that the parties with whom they were negotiating a purchase were here; that it was notorious they kept a close watch, or words of like import?

(The pl'ff objects for the reason that the question does not quote Phillips' testimony.)

(The defendants reforms the above questions and propound the following:)

Did you at any time, when the Duffners or either of them were here after the land in question or at any other time, mention it as a fact that the company or some of them was with the said Duffner, and that this fact had excited comment, or words of like import?

(Question objected to for same reason as above.)

A. I did not.

248 5th Q. Did you ever at any time, to or in the presence of said Phillips, remark anything about members of the company being or staying with the said Duffners or suggest that others had by such means been kept from seeing or conversing with the said Duffners or either of them?

(Question objected to.)

A. I did not.

Redirect examination:

1st Q. Who introduced you to Duffner?

A. Mr. D. D. T. Farnsworth, to the best of my recollection. He brought him to my house.

2nd Q. Would you not have told Duffner of the defect in the title but for the fact that Mr. Farnsworth was present?

A. I would have told Mr. Duffner about it if he had asked me about it.

3rd Q. Would you not have volunteered the information but for his presence at your house?

A. If the subject had come up I would.

Recross-examination:

1st Q. Are you not a German and is not Mr. Duffner a German, and could you not have expressed to the said Duffner in the German language the distrust which you seemed to have of the title without Mr. Farnsworth understanding you?

A. I could have done so.

249 And further this deponent saith not.

CHARLES E. MYLINS.

1 day, 1 certf., 4 h'rs.

By consent of parties the further taking of these depositions is continued to February 22nd, 1887, at the same place and between the same hours.

Given under my hand this 16th day of February, 1887.

W. G. S. TOTTEN,
Commissioner.

FEB. 22ND, 1887.

Present: M. T. Frame, counsel for plaintiff, and John Brannon, counsel — defendants who have answered and for Henry C. Koon.

JOHN R. BOGGESS, a witness of lawful age, being by me duly sworn, deposes and says:

1st Q. State your name, residence, and occupation.

A. John R. Boggess is my name; I reside at Clarksburg, and my principal occupation since I was twenty years old has been a surveyor. I have been for twenty years surveyor of the United States district court for the district of West Virginia.

2nd Q. Have you any knowledge of a survey of 40,000 acres of land patented to Wilson in Randolph county, now in the counties of Randolph, Upshur, and Webster?

A. I have.

250 3rd Q. Have you any knowledge of its location relative to other surveys?

A. I purchased once or twice, at a tax sale, the tract of 60,000 acres surveyed for Thomas Wilson, and have some knowledge of its boundar*ie* lines, and have examined a survey made for the same Thomas Wilson for 40,000 acres calling for adjoining said 60,000 acres, and in that way became acquainted with the said 40,000 acres. I have done and had done quite a good deal of surveying where these Wilson surveys are located, and in that way not only became acquainted with those surveys *and* with surveys conflicting with them. The location of the 60,000 I know is fixed and established, and the calls of the 40,000 calls for four lines of the 60,000 acres, and that establishes and fixes the boundaries of the 40,000 acres.

4th Q. Look at Exhibit B B and state what it is and speak as to its accuracy and speak of the different surveys thereby represented, giving dates of survey and patents in detail.

A. This exhibit is a plat made by me at the instance of Mr. Duffner, which I believe to be accurate, having seen some of the corners

and lines of the Standish Ford connection of surveys made in 1789, containing 45,976 acres in all, which is one of the plats laid
251 down in blue lines and marked on the map Standish Ford's 45 surveys made in 1789, 45,976 acres. The survey of 30,000 acres of John Davenport & others is laid down from connections made by me in the case of Benjamin Rich & others against Latham & others, indicated on the plat, John Davenport & others, 30,000 acres, made 9th of Oct., 1793. The survey of 35,062 acres is laid down from its calls and connection with the said Davenport survey, indicated upon the plat here, marked David Lynn, 35,062 acres, made 3rd of Nov., 1794. Three lines of Frederick Falley's 30,000-acre survey, adjoining the said Davenport and others on the west, is laid down from the call of the survey and marked upon the plat here Fred. Falley's 30,000 acres, made 5th Oct., 1793. The small surveys on the south are laid down from connections made by me within the last ten years in the case of Eston Young, &c., against Homer A. Holt & others, Wm. Stewart's, No. 1, 5,000 acres, made July 1st, 1785; B. Reeder, 5,732 acres, made 20th Nov., 1793; B. Reeder, 5,000 acres, 22nd Nov., 1793; B. Reeder, 5,868 acres, 22nd Nov., 1793, and F. Reid, 10,000 acres, made 30th Nov., 1794; three lines of a connection of surveys made for Abner Cloud in July, 1785, represented on said exhibit "This represents the Abner Cloud surveys, made in July, 1785." This is laid down from connec-
252 tions in my office. The lines shaded blue and marked 55 surveys, made for Dr. Thomas Bond, 67,473½ acres made 20th of May, 1785, were laid down from connections in my office and from information gotten from W. T. Higginbotham, Col. Westfall, and others.

5th Q. Will you please point out on the map, Exhibit B B, that part of the land included in the Wilson survey that was vacant and unappropriated at the date of the Wilson survey?

A. There seems to be a small piece between the surveys indicated as the Abner Cloud surveys and the Dr. Thomas Bond survey, containing a few acres, which is not covered on this map by prior claims indicated on the map by the letter A. There are the surveys of 100,000 acres made for Joseph Tidball, and another of 100,000 acres made for James Welch, made on the 5th and 10th of June respectively in the year 1795, which would cover the point A within the said 40,000-acre survey.

6th Q. Did you ever have any conversation with any of the owners of the Wilson 40,000 acres claiming under the tax purchase prior to May, 1883, touching the validity of their title to the Wilson survey?

253 A. I do not remember with accuracy dates, but about four or five years ago a gentleman from New York called to see me at my office, in Clarksburg, presenting a letter of introduction from Senator Camden and, I think, also one from Senator Davis. He exhibited to me some paper showing, I think, the purchase of Thos. Wilson's 40,000 survey from a number of men, several of whom I knew and now remember their names. Among them were W. C. McCormick, of Clarksburg; Mr. Munks, of Baltimore; Mr. D.

D. T. Farnsworth, that I remember. It strikes me that the paper he showed was a contract, with a list of the names of the contracting parties, including those I have named. He inquired of me as to my knowledge of the title to the 40,000 acres of Thomas Wilson. I told him I had knowledge of it and regarded it as entirely worthless. That knowledge I had obtained from a written opinion of Judge John S. Huffman and my own knowledge of a considerable portion of this land being held by actual residents and owners claiming under Davenport, Stringer, and others. I gave to this gentleman a copy of the Huffman opinion, and told him that I knew a number of the parties from whom he claimed to have
254 purchased, and that I regarded Maj. Farnsworth as a perfectly responsible party, and that a deed of general warranty from him would be good. After this occurrence with this New York man I met Maj. Farnsworth here and told him substantially what had occurred between this New York gentleman and myself, and expressed my surprise to him that he should be a party to a sale of lands which I regarded as wholly worthless in title. My recollection is that he thought enough of it could be held to compensate the parties purchasing.

7th Q. In relating to Farnsworth what had occurred between you *on* the New York man did you or not tell him of giving to the man a copy of the opinion of Huffman refer-ed to?

A. My recollection is that I did, and stated to him what that opinion was.

8th Q. Look at Exhibit C C and state what it is.

Counsel for defendants seeing that the paper referred to in the foregoing question is marked a copy of a paper purporting to be a copy of a paper signed by John S. Huffman, and that any copy should be filed as evidence unless it be shown that the original does not exist, or that search has been made for the same and can-
255 not be produced, and independant of the test list herein made, it is objected that the original would be admissible if produced.

A. This — a copy of the paper refer-ed to — my deposition, and the original of which is — my possession in the handwriting of John S. Huffman.

9th Q. Will you produce for the inspection of defendants' counsel, Judge Brannon, here now, the original?

A. I will, and I now here offer the paper, and I here file the same as part of this deposition, marked Exhibit D D.

(Counsel for defendants objects now to the last-named paper being filed to be read as evidence, because the same is not by any evidence of the witness so connected with the matters involved in this suit as to have any effect with or connected in any manner with questions involved in this suit.)

10th Q. Is there any fact within your knowledge that you can state that would fix the time of your conversation with D. D. T.

Farnsworth in relation to the purchase of Duffner of this land showing which was prior—the conversation or Duffner's purchase?

A. My first knowledge of the sale to Duffner was through a conversation with a man from Cleveland by the name of Batchellor. I had no conversation with Mr. Farnsworth in regard to a sale
256 afterwards. I have no recollection of having any conversation with Mr. Farnsworth about the Duffner sale prior to the sale to Duffner. I am not sure that I had any after, but my impression — that I had a conversation with him after the sale to Duffner similar to the one alluded to after meeting the man from New York.

11th Q. Which was prior—your first conversation with Farnsworth relative to his title to the 40,000 acres, in which you told him of the contents of the Huffman opinion, or Duffner's purchases?

A. The first conversation with Farnsworth was prior to the Duffner purchase. I learned it from the deed I think, and other sources.

12th Q. Can you state any fact which promised to involve you in litigation in relation to what you had said in regard to the title to the New York party which enables you *you* to fix the date of the conversation with Farnsworth as being prior to Duffner's purchase?

A. Yes, sir; some one whose name I cannot now recall, either at Beverly, in Randolph county, or at Buckhannon, in Upshur county, said to me that but for the sale to Duffner you would have been sued for damages for preventing the sale before.

13th Q. State who John S. Huffman was, where he lived,
257 and what position he held in this State.

A. John S. Huffman lived in Clarksburg for a number of years preceding the war, and was a very prominent lawyer and distinguished for his knowledge of the land law. After 1865 he returned to his old home, in Clarksburg, and resumed the practice of the law. In 1872 he became one of the judges of the court of appeal of this State, which office he resigned about four — after his election, and died at Clarksburg in 1877.

Cross-examined:

1st Q. Have you ever run any of the lines of the surveys delineated on plat which you have exhibited with your deposition other than the said Thomas Wilson survey? If so, please state which of them you have actually run.

A. I run part of the lines of the Standish Ford connection, alluded to in my deposition, and the lines of the Stewart and Reeder surveys, and of John Davenport survey.

2nd Q. Having run those, state whether they are laid down on the map—from your knowledge of the surveying you did of the Ford, Stewart, Reeder, and Davenport—correctly in connection with the said Thomas Wilson survey.

A. Yes, sir; they are; and from other reliable data, and I believe them to be accurately laid down.

258 3rd Q. You have also laid down on said map the Abner Cloud, Dr. Thomas Bond, and David Synn? State if you know any of the lines of said surveys. If so, what ones?

A. I have never run any of the lines of the Abner Cloud or Thomas Bond surveys, but have connections with those surveys as they have been pointed out to me from actual running done by me in the cases referred to, and have laid them down from that data. The David Synn survey, as I have stated before, was laid down from its connections with the Davenport survey.

4th Q. Do you not know that the Abner Cloud survey has been disputed and in controversy for years and years because of the question and doubt of its *in*dentity?

A. I have heard that its identity was questioned and the title abandoned.

5th Q. State whether you have been frequently in the Buckhannon River country, where the Bond survey would lay, according to your plat, engaged in surveying and running land.

A. I have.

6th Q. Does not lot No. 1, of 2,000 acres, of the Dr. Thomas Bond surveys call to begin at a sugar standing 800 poles west of the Buckhannon river and about a half a mile above the mouth
259 of the first left-hand fork of said river?

A I don't remember the calls, but I have read them and have them in my office.

7th Q. Then assume that the northern line, which is to run from the beginning of the Bond surveys, should be "about a half a mile above the mouth of the left-hand fork of Buckhannon river," state whether your said plat, — has the Dr. Thomas Bond surveys of 69,473½ acres, is laid down correctly on your said map.

A. I have laid them down as a whole. If the beginning is on the north end of the connection of surveys it is not laid down accurately.

8th Q. If the beginning of the Bond survey is as stated in the preceding question and the Bond surveys extend southward thereof, then indicate by answer and on your map about where it would be.

A. It would be about on the north line of the Standish ford, about 400 poles east of the northwest corner of the Standish Ford survey, as laid down on the map aforesaid; I cannot locate with any great precision; I would say it was about so.

9th Q. Assuming the corner to be as you put it with reference to call suggested in former question, then what would be the
260 distance from the corner of the Bond survey as laid down on said map to the beginning corner indicated by you by reference to call of the same to be one-half mile above the mouth of the left-hand fork of the Buckhannon river?

A. It would be about twenty-five hundred poles in a southeasterly direction.

10th Q. Were you acquainted with the lands of Judge John S. Huffman the 11th of December, 1876, being the date of the paper you have filed here to-day, or have you by any relation to his business since his death information that will enable you to state the probable amount or quantity of lands he claimed at the date of the paper aforesaid inside of the Thomas Wilson survey of 40,000 acres?

A. I had some knowledge of his lands at that time and still have data from which I could ascertain how much he owned inside of the Wilson survey. My attention never having been called to it and never having given it much thought, I could not state with any degree of accuracy what lands he claimed within this survey. My impression is that he owned but very little. His lands in that locality were principally within the 60,000 acres.

Re-examination direct:

261 1st Q. What survey or surveys did you speak of in your direct examination which is not laid down on the map — lies on the north of the Wilson survey?

A. My recollection is that I spoke of three surveys—the Joseph Tidball, of 100,000 acres; James Welch, of 100,000 acres, and Thomas Laidly, 10,000 acres. A part of the Laidly of 10,000 acres laps on this Wilson survey, but I don't know the extent. I don't think it is very much.

2nd Q. How much of a lap would there be, by reason of the Tidball and Laidly surveys, on the Wilson?

A. The greater part of the Wilson survey north of the Standish Ford surveys is covered by the James Welch 100,000 and the Joseph Tidball 100,000 acres. I would think it would be, approximately—would be about three-fourth- of the Wilson survey not covered by the Standish Ford, John Davenport, and Fred. Talley surveys.

3rd Q. Look at the map marked E E and state if the two latter surveys mentioned by you are accurately laid down thereon.

A. I think they are.

262 Recross-examination:

1st Q. Do you not know that the Thomas Wilson survey of 40,000 acres is an older survey than the Welch and Tidball surveys, of which you have spoken?

A. I think so. The Thomas Wilson was made in March, 1795, and the Welch and Tidball were made in June, 1795.

Re-redirect examination:

1st Q. Do you know whether or not the Welch survey is now owned by Benj. Rich and that the same has been established and maintained in the Federal court for the district of West Virginia in an action of ejectment?

A. I know that a great many actions of ejectment have been brought by Benj. Rich and others under the Welch title. Some of them have been disposed of in his favor and some of them against him, and some more of them are still undisposed of.

Re-recross-examination:

1st Q. Do you know of any case of Rich's referred to in your last answer — involved any land claimed under the Thomas Wilson 40,000 acres?

A. I do not, of the cases tried.

263 2nd Q. Is not the grant of the Welch land *is* what is called an inclusive grant, excluding all prior rights?

A. It is.

And further this deponent saith not.

JOHN R. BOGGESS.

1 day; 40 mil's; 1 certf.; 4 hrs.

FEB. 22ND, 1887.

By consent of parties the further taking of these depositions is continued to February 23d, 1887, at the same place and between the same hours.

Given under my hand this — day of February, 1887.

W. G. S. TOTTEN,
Commissioner.

FEB. 23D, 1887.

Present same parties as on yesterday.

WM. T. HIGGINBOTHAM, a witness of lawful age, being by me duly sworn, deposes and says:

1st Q. State how long you have been a citizen of Upshur county.

A. Since its formation.

2nd Q. What is your occupation?

A. Farmer and surveyor.

3rd Q. State whether or not you have any knowledge of the Bond survey of 69,473½ acres and of its location, with reference to the Thomas Wilson 40,000-acre survey.

A. I think I have. I am not positive about it. The Bond
264 survey is an uncertain quantity because of the uncertainty of its identity.

4th Q. Look at the map marked Exhibit B B, with deposition of John R. Boggess, and speak of the location of the Bond survey as to its accuracy as laid down.

A. I recognize this as the Bond survey as laid down on this paper, as to its shape.

5th Q. Did you ever see the beginning corner of the Bond survey?

A. I never did.

6th Q. If you know of any fact that goes to locate the beginning corner, state what it is.

A. In 1858 I was shown a point by Samuel Warner, who said he was at that corner with Fink, Jackson, Gallager, & others, from which Gallager and Jackson made a resurvey—marked a line. I ran that line, blocked it, and found the Fink, Gallager, and Jackson work upon it. That line I ran west. I then went back to that point, ran south, blocked, and found timber (marked) of the proper age for Fink's work. I afterwards ran from this point north. My general recollection is I did not block timber until 754 poles. I think from this point, as shown by Warner (I blocked a poplar—it bore marks of the right one for Fink's work), I continued that line

until it struck the Buckhannon river without finding any
265 more work. Then I ran west from the Buckhannon river, crossing Grand Camp, a branch of French creek, a short distance south of its mouth, 800 poles the whole distance on that line. I found no corner. I then ran south, I suppose, the breadth of two lots—800 poles, I think—finding no work, the distance going out 150-odd poles before I reached the first west line I ran upon which I found the work.

7th Q. What is your opinion from what you found about the identity of the survey?

(Question objected to.)

A. If you require me to go 800 poles west from the river, then I don't think it can be identified; but if you suffer me to stop at 300 poles from the river for my beginning corner, then I would have timber of the right age and the river, in the lots as described by Fink—then you get timber of the proper age for Fink's work and the lots on both sides of the river as described by Fink.

8th Q. Where would the corner of the Bond survey be if located as you would locate it, with reference to the northwest corner of the Standish Ford survey and called the beginning corner?

A. About 2,500 poles from the maple, the beginning cor-
266 ner of the Standish Ford survey, running about north.

Cross-examined:

1st Q. Do you not know that lot No. 1 of the Bond survey calls to begin at a sugar, about a half a mile above the first left-hand fork of Buckhannon river, standing 800 poles west of the river aforesaid? Now, state, if that is so, how far from the first forks of said river do you locate the beginning of the Bond surveys.

A. I would assume that Grassy Run was a fork of the river and I would then be about half a mile above to start to run west to my beginning corner and would stop at the end of three hundred poles.

2nd Q. Now state, as you was asked, the distance from this point to a half mile above the forks of the river, at the sycamore corner.

A. That would be 2,400 poles.

3rd Q. State where the line you run north & south lays with reference to the Indian camp on Buckhannon waters.

A. It passes over that bluff of rock commonly known as Indian Camp, over the west end of it.

4th Q. State where that line, continued north, would strike the Buckhannon river.

A. It strikes the Buckhannon river about opposite to the mouth of Gravel or Grassy Run.

267 5th Q. Did not the said Warner show you a point near the said Grand Camp which you have been speaking of as the beginning corner of the Bond survey?

A. No, sir; he or nobody else.

6th Q. Has not the said Bond survey, as to which you have been speaking, been in dispute, as to identity, ever since you have lived in Upshur county?

A. Yes, sir.

7th Q. Do you not know, ever since you have lived in Upshur county, that it has been more searched for to ascertain its identity than any survey you know of?

A. I know that there have been frequent efforts made to identify the Bond survey and have failed.

8th Q. Do you not know of persons who were experienced in surveying owning different lots of the Bond survey of 2,000 acres each abandoning the same for want of identity?

A. No, sir; unless John Brannon and David Bennet, who owned lots in it. I don't know about their abandoning it.

It becoming late, by consent of parties the further taking of these depositions is continued to Feb. 24th, 1887, at the same place and between the same hours.

268 Given under my hand this 23d day of February, 1887.

W. G. S. TOTTEN,
Commissioner.

FEB. 24TH, 1887.

Present same parties as on yesterday.

9th Q. What is the distance you run on the north and south line you have spoken of?

A. About 2,500 poles.

10th Q. State, if you know, by the calls to the grants of the different Bond lots, how far the corners on that line ought to be apart.

A. Four hundred poles.

11th Q. Did you find any of the corners called for on that line?

A. I found none myself.

Redirect examination:

1st Q. Did Warner, who showed you the place of the beginning corner to the Bond survey, say to you that he was there when it was made?

A. He did not show it as a beginning corner, but he showed it to me as the point from which Jackson — Gallager began their resurvey of the bond survey.

2nd Q. Who do you understand made the original survey of the Bond survey?

A. Fink; the first name I am not positive about.

And further this deponent saith not.

269 W. T. HIGGINBOTHAM.

2 days.

W. T. HIGGINBOTHAM recalled by defendants:

1st Q. State, if you know, when the last search and surveying was done to ascertain the boundaries of the Bond surveys—by whom and with what results.

A. As far as I have any knowledge of it, it was by myself, in the fall of 1867. I found two sugar trees that was of the proper age

for Fink's work. I found one other tree—a lynn—that I could not decide whether it was the work of Fink or the work of Jackson and Gallager. I found other trees that would answer for the Jackson and Gallager work. I found a defaced line which had been defaced fifty-three or fifty-four years before that time; the trees had been blocked so deep that the age could not be ascertained, but the time it was defaced could be ascertained.

And further this deponent saith not.

W. T. HIGGINBOTHAM.

JOHN R. BOGGESS recalled by the plaintiff:

1st Q. Will you indicate on the map marked B B, by dotted lines, where the beginning corner of the Bond survey would
270 be located 2,500 poles north of the northwest corner of the Standish Ford survey?

A. If the beginning corner of the Dr. Thomas Bond survey is the northeast corner of the Thomas Bond connection of surveys, as laid down with lines shaded blue, it would be about five hundred poles east of that point, at the point marked X.

2nd Q. What do the dotted lines made by you on the map indicate?

A. They indicate the connection of Bond surveys laid down from the point X.

3d Q. Are you now able to state whether any part of the Thomas Laidly survey laps on the northeast corner of the Thomas Wilson 40,000-acre survey?

A. Since my examination on yesterday I have examined a connection of the surveys in that locality, which I have and believe to be correct. It shows that nearly two thousand acres of the survey for 10,000 acres made for Thomas Laidly and sold as forfeited lies on the northeast corner of the Thomas Wilson survey of 40,000 acres.

Cross-examination:

1st Q. Did you ever run the lines of the Laidly survey, of which you have spoken, so as to fix the connection with it and said 40,000-acre tract?

271 A. I have not myself, but have had it done by a deputy of mine, Daniel Sherwood, and have a large number in my possession showing this connection.

And further this deponent saith not.

JOHN R. BOGGESS.

STATE OF WEST VIRGINIA, }
County of Upshur, } *ss:*

I, W. G. S. Totten, a commissioner of the circuit court of Upshur county, do certify that the foregoing depositions of A. J. Marple, G. M. Fleming, S. B. Phillips, N. M. Ferrell, C. C. F. McWhorter, Charles E. Mylins, J. R. Boggess, and Wm. T. Higginbotham were,

by consent of the plaintiff and by consent of the defendants, who have answered, and H. C. Koon, in the chancery cause of Joseph Duffner, plaintiff, and D. D. T. Farnsworth & others, defendants, pending, as stated in the caption thereto, to be read for and on behalf of said plaintiff therein, were taken and written by me, the deponents being first duly sworn by me, and the same were subscribed to before me by the respective deponents thereto, and I certify that I have no seal of office.

Given under my hand this 24th day of February, 1887.

W. G. S. TOTTEN,
Commissioner.

272 *Costs.*

Com'r:

To 18½ hours employed taking depositions, at 75 cts. per hr.	$13	87½
" 1 subpœna, 25 cts., & 5 copies, 15 cts. each, 75	1	00
" 7 witness certificates, 30 cts. each	2	10
Total commissioner's costs	$16	97½

Witnesses:

A. J. Marple, 1 day	$1	50
G. M. Fleming, 1 day	1	50
S. B. Phillips, 1 "	1	50
N. M. Ferrell, 1 "	1	50
Chas. E. Mylins, 1 "	1	50
W. T. Higginbotham, 2 days	3	00
John R. Boggess, 1 day, $1.50; 40 miles, $4.00	5	00
Total — witnesses	$15	50

Sheriff's fees:

To summoning 5 witnesses, 25 cts. each	$1	25
Total amount	$16	97
	15	50
	1	25
	$33	72

273 Endorsed as follows: Joseph H. Duffner *vs.* D. D. T. Farnsworth & others. Plaintiff's depositions. 1st March, '87. 8 witness fees.

274 *Captions for Depositions.*

Depositions taken before me, Mortin T. Horr, notary public within and for the county of Cuyahoga, in the State of Ohio, to be read in evidence on behalf of the plaintiff in a suit in equity pending in the district court of the United States in and for the district of West Virginia, in which Joseph Duffner is the plaintiff and Daniel D. T. Farnsworth *et al.* are the defendants.

Present: Henry M. Russell, on behalf of the plaintiff, and John Brannon, on behalf of the defendants who have answered the bill, and Henry Koon, and waiving notice.

MATTHEW DUFFNER, of lawful age, being by me first duly
275 sworn, as heretofore certified, deposes and says as follows:

By HENRY M. RUSSELL:

First question. State your name, age, occupation, and place of residence.

My name is Matthew Duffner. I am 35 years of age. I am a brass finisher by occupation, and I reside in Allegheny City, Pennsylvania.

2nd ques. Are you a son of Joseph Duffner, of Cleveland?

Yes, sir.

Q. Did you go with your father and your uncle, Chas Duffner, to Buckhannon, West Virginia, with reference to the purchase of some land? If so, state at length all the circumstances attending your first and any subsequent visit and what was done by your father, if anything, giving dates, names, amounts, and other particulars precisely.

Ans. Yes, sir; I did. I have forgotten the exact dates. I think it was in 1883. I was in partnership with a man by the name of Woods, in Virginia, in Buckingham county, and I was looking around for timber—black walnut—and he mentioned to me that he had a cousin by the name — Colonel Wood living near Oakland,
Md., who, he said, had tracts of land *of land* for sale, either *his*
276 or *as agreed deed*. If I wished he would write for particulars.
He wrote to Col. Wood, and he answered he did have tracts of land—one in Va. and one in West Va.—for sale, and for me to come and see him any time in regard to it. A few weeks afterwards I had occasion to go to Cleveland and on the way called on Col. Wood, near Oakland. He showed me a map of the West Va. land, located within a few—three or four—miles of Buckhannon. I told him I would go to Cleveland and see parties there in regard to it. He told me to let him know what time for him to meet me at Clarksburg and I wrote him a postal card appointing a day (in answer to a postal from him), and he was there. We met, my father, my uncle, Charles Duffner, and myself, at Clarksburg. We then went up to Buckhannon in company with Col. Wood; went to a hotel there; and as soon as we got there Mr. Wood said he would go and see some parties and be back immediately. He then came back with

Mr. D. D. T. Farnsworth and Henry F. Westfall; I am not sure as to Westfall's first name. Mr. Farnsworth introduced Mr. Westfall to us as the county surveyor and said he knew all about the
277 land, as he had surveyed it a number of times, and would show it to us. We then arranged to go and look at the land. The next day we all—Westfall and I a horseback and father, Chas. Duffner by conveyance—went to the place, at a saw-mill. Mr. Westfall said he had to go back to Buckhannon, and — meet us next Monday evening at Mr. Isaac Simons' place. He gave me a letter to Isaac Simons; it was closed; we handed it to Mr. Isaac Simons. That was all done there. Monday evening Mr. Westfall met us and we continued on and he showed us the land and lines and marks that he said he had made himself. After looking at it we all came back together to Buckhannon. Mr. Farnsworth came and asked us how we liked the land. We told him most of what we had seen was very nice. He then said it would be no use to do any business with Mr. Wood, as he was under the influence of liquor, and invited us to come up over his place of business, a larger room; part of it had been used for a tailor shop; then we found Mr. Thomas there and Mr. Cooper, an old gentleman—I think Henry Cooper. Mr. Farnsworth closed the door and commenced talking to us about this land and the title to it; told us we had better do business with
278 him than with an agent; that he and Mr. Thomas and Mr. Cooper were the authorized parties to transact the business and fully responsible. He said that he was and old settler, in the city a long time, had been in the Legislature, and, in fact, was an old resident and church member of the place. We asked him regarding price, and at first Mr. Thomas said we could buy the land for $20,000 cash. After considering things, Mr. Farnsworth said they must have something more for their trouble, as they had a great deal of trouble and expenses, and, finally, they came to an agreement in price, $21,500, and they told us that the title, when we got them, were A No. 1; they couldn't be better; that the same tract of land had been sold once for $100,000 to some company in New York, who had failed and neglected to pay the taxes, and they could assure us that the titles were all right and A No. 1; that they would not have anything to do with titles that were not good; that his reputation in that community was A No. 1; that he wouldn't do anything to injure it under any circumstances and for no
279 amount of money. We believed him and he drew up the papers himself. From there we came back to Cleveland. I was still in Cleveland when Mr. Farnsworth came here a few weeks afterwards to Mr Fish's office, in regard to changing the interest in the land. I had a third; Uncle Charlie had a third. I had no money, of course, to pay for it. They changed interest, so that father had to pay it all. They just put in his name. This is all I had to do with the transaction, except that I was called on in Wheeling to testify.

Q. What further did you see of Mr. Wood after you came back from looking at the land?

We saw Mr. Wood and we did not speak to him. I didn't but

once or twice in Buckhannon. He said he wanted to go back to Clarksburg with us in our conveyance, as he was short of money. He came back to Clarksburg with us and there we parted. It was the last I saw of him, then or since.

Q. How long after meeting Wood at Oakland was it before you went to Buckhannon?

As near as I can think, about three weeks.

280 Q. How long after you got to Buckhannon before Mr. Farnsworth came to see you?

Ans. A matter of an hour or two, not long, as near as I can recollect.

Q. Whom else did you or your father or uncle see in Buckhannon and talk to, except Wood, Westfall, and Farnsworth, before you went to look at the land?

We talked to no one, as I recollect, aside from those parties, in regard to land. Mr. Farnsworth and Thomas told us not to state our business to any one there.

Q. Did Farnsworth or Thomas tell you why you should not mention your business?

They told us that the people were so inquisitive that it was best to keep the business to ourselves and not tell it.

Q. While Westfall was out with you looking at the land, if he made any statements about the title please tell what they were.

281 Objected to by defendant because not a party to contract and no authority to speak.

He told us the titles were good and A No. 1, and that he had surveyed the land a number of times; had been in that country a long time; knew all about the land, and no one knew more about it than he did.

Q. What, if anything, did Isaac Simons tell you about the land?

Nothing whatever.

Q. Did Farnsworth, Cooper, and Thomas, when talking to you in this room over the tailor shop, tell you for whom they were acting?

They did say that there were some parties interested in this land living in Pennsylvania, I think, and I have forgotten where the others were all said to live. They told us how many—a good many—that had an interest in this land, and that they were authorized by them to sell it.

Q. Did they say who was to get this money?

282 Mr. Farnsworth said the money should be paid to him and he would settle with the other parties; that we had nothing to do with them.

Q. Did you hear this committee say how they were going to divide the money?

No, sir.

Q. You spoke of Mr. Farnsworth having prepared some papers; what papers were they that he prepared at that time?

There was an agreement to pay $21,500 for this land, of which he acknowledged the receipt of $100, that we paid him cash in hand

at the time. In regard to dates of payment under the agreement, I have forgotten, except that it was a very short time; I think a few months or so.

Q. Are you referring now to the same agreement which was introduced in evidence in the jury trial at Wheeling relating to these same matters?

Yes, sir.

Q. When Mr. Farnsworth came to Cleveland and you saw him at Mr. Fish's office, what conversation took place?

None that I heard.

Closed.

283 Cross-examination by JOHN BRANNON:

Q. Did you meet with Col. Wood, whom you have referred to, at Grafton or Clarksburg?

At Clarksburg.

Q. You speak of Col. Wood going out after you arrived at Buckhannon; you stated further that he returned with Mr. D. D. T. Farnsworth and Westfall, whom you call Henry F. Westfall. Now, state how long this was after you first arrived in Buckhannon.

It was very shortly—an hour or two or such matter; it was at night time—evening, I should have said; it was not late.

Q. Are you certain that the aforenamed D. D. Farnsworth so returned with the said Wood on the evening of your arrival at Buckhannon?

Yes sir.

Q. Is that the time you refer to that the said Farnsworth introduced to you and your father the Westfall to whom you refer?

That is the time Mr. Westfall was introduced by Mr. Thomas and Farnsworth.

284 Q. Is the Westfall to whom you refer the same Westfall who went with you to view the land?

Yes, sir.

Q. Is his name not Watson Westfall?

I have said I wasn't positive about the first name. It may be.

Q. You speak of Farnsworth stating that here was Mr. Westfall, and that he had surveyed the land and could show it to them. Now state whether that was at the time you refer to and before you went to look at the land.

It was at that time and before we went to look at the land.

Q. How long did you and your party remain at Isaac Simons'?

We arrived Saturday night and remained till Monday morning.

Q. Was Jos. Duffner one of the party who so remained?

Yes, sir.

Q. Did not Isaac Simons state to yourself and your father that he lived on the land, and that he claimed and owned a large boundary within the tract of land you were looking at, under a different and adverse title to the tract of land you went to look at?

285 No, sir; he said nothing of that kind to us. We did not tell him what we were looking at. We were told not to say anything to any one.

Q. Did not said Simon say, upon the occasion when you were so at his house, that the title to the land you were looking for was a tax title, and that they were very questionable, or words to that import?

No such conversation took place at all.

Q. You speak of a contract having been written showing your purchase, and about you having gone to a room in which there was a tailor shop. State whether this was before or after you returned from viewing the land.

It was after viewing the land.

Q. When did you first see the man Thomas, to whom you refer?

I saw him the first night when we arrived at Buckhannon—no; come to think, they were waiting for him to come and he did not get in till next day or night. We were there over a day—no, again; it was after we came back from viewing the land. Thomas was not there until we got back from viewing the land.

286 And further this deponent saith not.

MATTHEW DUFFNER.

CHARLES SCHNIEDER, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says:

By HENRY M. RUSSELL:

Q. State your name, age, occupation, & residence.

Name, Charles Schnieder; 38 years of age; work in brewery; resident of Cleveland, Ohio.

Q. What relation, if any, are you to Joseph Duffner?

Son-in-law.

Q. State all you know about Mr. Duffner's purchase of land near Buckhannon, in West Virginia, and what he did in regard to taking possession of the land.

He sent me up there to take possession of the land. I first met Mr. Farnsworth (Daniel D. T.). I asked him when I could take possession of the land. He said, Yes, of course, I could do that at any time. He had some money to come yet from my father-in-law on that bargain, and the next day after he came over there he
287 went to Cleveland and got that money. When he came back I asked him to show me the land. He said he couldn't show me the land; knew nothing about it; I should ask the county surveyor, who would show it to me. He gave me advice to wait five or twelve years before we should touch that land, because the lumber market was very low and we couldn't make any money out of it before five or twelve years. I went to county surveyor, Watson Westfall. He said he had to tend to county court for about two weeks, and then he would give me a survey of the land. I mentioned to him when I wanted to commence to work. After the two weeks were passed he had something else to do in the court-house with maps for Mr. Rich. I then told him to show me the land that he showed us on the last day, and he told me the land would not belong to us, but to Mr. Rich. We, Mr. Duffner, Mr. Baldwin, and

I, before this had been up in the mountains for three days with Westfall looking at the land. He showed us the land and said, Mr. Duffner, that land belongs to you as far as you can see. The last of those three days he showed us a nice piece of land, and when
288 I went to take possession father-in-law told me to commence work on that last piece of good land. I asked Westfall to give me a line, so that I would not interfere with anybody else. Then he said he could not do that, because that land belonged to Mr. Rich and not to us.

He said he could compromise with Mr. Rich for 50 cents an acre and we could have it. I said father would not be willing to do that, as he had paid for the land once and wouldn't want to pay for the land again when he was uncertain whether he would get it or not. I said if he could show me no land and give me no lines we would have to see about it in some other place, where we could get the thing decided. Then he said if we had to go to court not to go to United States court, as we never could get justice there, but go to county court and push it right through. That is all I said with Westfall or Farnsworth. We did not get the land. None of the men who sold the land could show it to us.

Q. How long after Jos. Duffner bought the land was it that you and Duffner and Baldwin went up to see the lands?

289 Joseph Duffner went up the first time in March, I think, and we three went up in August. I cannot tell exactly.

Q. How long after you and Duffner and Baldwin were there was it that you went up to take possession of the land?

I went to Buckhannon Sept. 25, as far as I can remember. I stayed there till some day in February of the next year. I can't tell exactly—last part of February or first part of March.

Q. Why did you stay so long?

I wanted to find out if there was any possibility of getting some kind of possession of the land, but the sellers all said they knew nothing about the land.

Q. Who paid you expenses during this time and how much did they amount to?

Mr. Duffner, as far as my money didn't reach. They amounted to about $1,000, of which Mr. Duffner paid me $200 at one and $35 at another time.

Closed.

Cross-examination by JOHN BRANNON:

290 Q. Do you know of your father-in-law obtaining a deed; &, if so, did you go there before or after obtaining it?

Yes, he did; and I went after he got what he called a deed.

Q. When Westfall told you that the land did not belong to your father-in-law, but belonged to Rich, did you not know that Westfall was the surveyor and agent for Rich, in respect to the Rich land?

No; I never knew anything about that.

Q. Did not Westfall, on the occasion of your conversation with

him referred to by you, inform you that the Rich land only covered a small part of the land claimed by your father-in-law?

No; he never said a word about that. He only told me about that part that I wanted to commence to work on, and he said he couldn't give me any line that would interfere with nobody.

Q. Were you not informed, during your stay at Buckhannon, when inquiring about the land, that Rich claimed his land under what was known as the Welch survey, and that the land that your father-in-law claimed had been patented to Wilson, and that
291 the Wilson patent was older than the Welch patent, under which Rich claimed?

No; I was not informed of that fact.

Q. After you had this conversation with Westfall, in which you say he told you the particular piece of land you wanted to cut the timber from was in the Rich survey, did not Henry F. Westfall, in the presence of others, state to you that the Welch survey was an "inclusive survey" and it was younger than the Wilson survey?

He never talked to me about it.

And further deponent sayeth not.

CHARLES SCHMIEDER.

AUGUSTIN BALDWIN, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says as follows:

By HENRY M. RUSSELL:

Q. State your name, age, occupation, and place of residence.

Augustus Baldwin; 44 years of age; lumberman; residing at Lorain, Ohio.

Q. State what you know about Mr. Jos. Duffner's purchase
292 of land in West Va., near Buckhannon, and what was subsequently done towards taking possession of it.

He told me in his store one day, and he told me he had purchased some land in West Virginia, and, knowing my business, wanted me to go in partners with him. He hadn't the deed made out yet and matters fixed, and as soon as he had them done we were to go down and look at the land. We went down. When we, Mr. Duffner, Mr. Schmieder, & myself, arrived in Buckhannon we stopped at the Farrell House (Valley House). Soon after we arrived Mr. Farnsworth came in. We had quite a talk about the land and title and he represented the title first class, and during the conversation he represented himself very highly as a church member, member of the Legislature, Governor, and so forth. He said title to any lands he had were all right; that he would not touch anything not first class. Next day, Mr. Westfall, county surveyor, took us out and showed us the line or part of it, as he claimed. We were up on the hill two or three days. He showed us some land that I afterwards found didn't belong to this tract at all. He claimed that he
293 was the only man, except one Pickens, who could find anywhere near the line. We stopped at old man Morgan's that evening. Next morning when we started and were about one to

two miles away from Morgan's we ran into a beautiful forest. I made mention to Westfall about this beautiful timber. We then dismounted and walked down the hill, looking at the timber. He then says to Mr. Duffner, "Behold all you see before you belongs to you." I afterwards learned that this very identical piece of land was not on this 40,000 a. survey at all. We got as far as Isaac Simons' on the way down. I & Westfall mostly rode together, and we talked about compromising with these squatters on it. He wanted I should get Mr. Duffner to let him settle up with them. He said if he was in Mr. Duffner'- place he wouldn't go in there and cut any timber under ten years, as the markets were very dull. He could get much better prices for the timber in ten years. When we got down to Simons Mr. Duffner & Schmieder were in advance a little ways. We stopped and talked to Mr. Simons. Westfall said to Simon that Mr. Duffner would most likely settle with the squatters on there on good terms. Mr. Simons then said, "I
294 rec on he'd better if he wants to come here." Westfall, on our return, showed us the other corner line which Duffner claimed. That remark that Simons made made me a little suspicious. There seemed to have been a watch put on us from the time we got to town till we left it; they seemed to pass us from one hand to another. About two weeks afterwards I went in through there alone. I wasn't satisfied with the first visit, mistrusting something wrong. I learned the title was no good, and also that the lines had been misrepresented to us the first time. I saw Mr. Farnsworth. He held a note against Mr. Duffner, so he said. He wanted me to see if I couldn't get the money on it in Cleveland. He offered such a big discount that I thought something was wrong. I started straight for home. When I got here I found Mr. Farnsworth here. It has always been a mystery to me how he got here before I, as I came right along and stopped nowhere. Before we, Duffner, Schmieder, & I, first went down I saw Farnsworth in Cleveland. He then represented that the title was perfect & good; said he wouldn't touch any land
295 unless the title was good; seemed to rely very much that he was a church member and wouldn't do anything that wasn't straight; that is as near as I can get at the facts of the matter.

All the statements of Westfall embodied in the foregoing answer are objected to by defendants because said Westfall is not a party or in any manner connected with the contract of sale, was not or acting as agent for any of the defendants in this suit, and the conversation referred to in foregoing answer not in the presence of any party hereto.

Q. What Farnsworth do you refer to in the foregoing answer?

This gentleman (indicating Daniel D. T. Farnsworth, who is present).

Q. At the conversation in Cleveland, before you first went to Buckhannon, who was present?

Mr. Jos. Duffner once, and another time Mr. Wm. E. Ransom.

296 Q. Please state particularly what was said at each of these last-mentioned conversations.

Once I met Mr. Farnsworth at Ransom's office, Duffner not being present, and again with Duffner at the butcher's exchange, where we got the "schuppers." The two conversations were the same in substance. In the first place, Farnsworth went to picturing the timber—beautiful timber there was on this 40,000-ac. tract—Wilson's survey; millions of feet in it. He then stated the facilities for getting it out, and the title he recommended very highly. He first started out really by giving his own character, stating that he was a church member and was a member of the Legislature; in fact, once Governor of West Va. for a short period, and he was interested in the bank here in some capacity; his social standing was very high; he couldn't afford to handle any land of which the title was not first class. That is about the drift of it all the way through.

Q. When you, Duffner, and Schmieder got to Buckhannon together and talked there with Mr. Farnsworth what, if anything, did Farnsworth say about Westfall's going with you to show you the land?

297 He said Mr. Westfall would go with us and show us the line and timber and all we wanted to see. It was here mentioned that Mr. Westfall, the county surveyor, had an interest in it. Next day Mr. Westfall told me he had sold his interest.

Q. Did Mr. Farnsworth say how he knew that Westfall would go with you and show you the land?

Strikes me he sent Mr. Westfall in.

Q. Did he say anything about having arranged with Westfall to go with you or anything of that kind?

He did. He said he would send him in and would have him go along with us.

Q. Did he say anything about Westfall's knowledge of the title?

He did. He said Westfall knew all about the line, the locality, and the title, being a county surveyor—well posted.

Q. During that trip with Westfall to look at the land did Westfall make any suggestion that the title was not good, apart from these squatters' claims?

298 He did not; he claimed that there would be about 22,000 to 24,000 acres that would belong to Duffner, as the squatters would not nearly take up 20,000 acres.

Q. What reason have you, if any, for saying that a watch was put upon you while there, and that you seemed to pass from hand to hand?

We were handed from one to another. We were introduced to one and then to another. One staid with us till we were introduced to the next, and even escorted to the depot. The remark that Isaac Simons made made me a little more watchful than I otherwise would have been.

Q. Were you with Duffner during the whole time that he was at Isaac Simons', so as to hear all Simons said to him?

Yes, sir.

Q. What did Simons say to him, if anything, about Duffner's title not being —?

Not a word. The remark I referred to about squatters was made

to Westfall & me after Duffner & Schmieder had gone on ahead quite a ways.

299 Q. What did Simons say to Duffner in your presence or to you, if anything, about Simons owning part of the land claimed by Duffner?

He said he owned about 600 a. of it. Duffner said that would be all right; he wouldn't disturb him, or words to that effect. Mr. Westfall then spoke up and said 20,000 a. was reserved for settlers.

Q. Did Simon- say how he owned this 600 a.—whether by possession or title?

He claimed by possession. H- said he had been there a certain number of years without being molested; I don't remember how many. A part of that conversation occurred when Mr. Duffner had left us.

Q. Did you have any conversation with Phillip Thomas or Jackman Cooper?

I had conversation with Thomas but not with Cooper. Thomas seemed to labor under the same strain, that he was a member of the Legislature at one time, and a German, and he told Duffner on his honor that as a German — would not do anything out of the way.

300 Q, When, where, and in whose presence was this conversation held?

In presence of Mr. Duffner at one time, at Duffner's store in Cleveland, and before Duffner, Schmieder, & I went down together. He said he had some girls there and would not have it thrown up to his children that their father ever done anything out of the way. He tried to impress us very strongly on that subject.

Q. In that conversation what, if anything, did Thomas say about the title to land that Duffner was buying or had bought?

He said it was No. 1; it could not be any better; it was the oldest patent on the land and originally from the Government. The title was first-class, and both men were highly respected in the community and would not be guilty of anything not strictly honorable.

Q. When Farnsworth asked you to see if you could get Duffner's note discounted, how much discount did he offer?

I think the note was $3,000 or over, and he offered to take $2,400. That was in the presence of a man named Weyless.

301 Q. When he made that offer did you tell him anything about your suspicions that the title to this land was not good?

I did. I intimated that I didn't think the title was any good. He just kind of smiled and says, "Well, I don't know; don't know."

Q. When you found him in Cleveland after that, on your reaching home, did he say anything more to you about having the note discounted?

He stated to me that Mr. Duffner had sent on a certified check.

Closed.

Cross-examination by JNO. BRANNON:

Q. You have spoken of your first visit to Buckhannon to look at this land. State the month as near as you can, the time of the month, if you can, and the year.

If my memory is right, it was in August or September somewhere, in 1883.

Q. Do you know whether it was before or after Mr. Fish and Jos. Duffner's visit to investigate title and obtain deed to Duffner?

302 Not positively, but I think it was. I am pretty sure it was before.

Q. Was the time you refer to the time Chas. Schmieder was along with you to look at the land?

It was.

Q. Did Duffner go with you on your first visit to see the land?

Yes, sir.

Q. Did not Duffner tell you then that he had a deed for the land?

A. He told me he had a contract.

Q. From what circumstance do you fix the time of this first visit in August or September, 1883?

I was about to go to Tennessee to look up some land, being somewhat acquainted there, & Mr. Duffner insisted on my going with him into Virginia. From that I fix the date.

Q. Did not Duffner propose to sell you half his land about the time you went to Buckhannon?

No, sir.

Q. He was hoping you would go in with him? State how.

There was nothing definite before my first visit.

303 Q. You say Westfall showed us land that did not belong to the tract. How do you know this?

The second time I went over the same tract of land with another party. On our way towards cabin we passed over this side of the tract of parcel — land that Schmeider referred to this morning (one), and then I was told by a number of people in the vicinity, one of them being this Henry Picken (some such name), whom Mr. Westfall said was the one, instead of himself, who knew the line. If I recollect right as to the name, he called it Ward land or tract; also an old hunter—a real old fellow—about 3 or 4 miles from Morgan's line or Ward tract, too; said he was born and raised in there, and several others whose names I don't know.

Q. Do you know anything of the extent of the "Ward" tract?

I do not.

Q. You mean to say your understanding is that this particular piece of land that is in the Ward tract is not within the boundaries of the land bought by Duffner?

304 It was represented by one to be in the 60,000 a. Wilson survey, and not in the 40,000 a. Wilson survey.

Q. You speak of representations made by Phillip Thomas in Cleveland. State when that was, as near as you can—the month.

Along in July, I think, or fore part of August. I am not positive.

Q. State whether that was before or after your first visit to Buckhannon to see about this land.

Before, I think.

Q. Did not Thomas speak, at the time of the conversation referred to, of a deed having been made to Duffner and the land paid for?

He did not. The second time he did, though—long since that transaction. Thomas came to see me at my home in Lorain afterwards and said he felt very sore over this thing; that he wouldn't have had this thing happen for thousands of dollars. He blaimed it all on Farnsworth; said he was a scround-el and tried to beat him, and other things to that effect.

305 And further deponant saith not.

A. BALDWIN.

CHARLES DUFFNER, being first duly sworn, deposes and says:

By HENRY M. RUSSELL:

State your name, age, occupation, and place of residence.

Name, Charles Duffner; 55 years of age; crockery business; residence, Cleveland, O.

Q. Are you a brother of Jos. Duffner, the plaintiff in this suit?

Yes, sir.

Q. State fully all that you know with regard to the purchase by Jos. Duffner of land near Buckhannon, in West Virginia, and the result of that purchase.

In 1883 we left here for West Virginia, toward the end of March, I think, and went to Clarksburg and waited for the next train. Colonel Wood came there. Then we went to Weston; staid there over night; next morning took a hack and went to Buckhannon. Then it was towards night when we reached Buckhannon, and then
306 we talked over how we could get up into the woods. Colonel Wood said he couldn't go, because he couldn't go in a wagon & on horseback it was too hard for him, as he has only one leg. Things was talked of as to how to go, and finally we met D. D. T. Farnsworth and others, and then we went in the hack. Then Mr. Farnsworth said Westfall would be the best man to take along if we could get him. Then we sent for Mr. Westfall and he says *and* he could go, and I, my brother, Joseph Duffner, and the driver went in the hack and Mathew Duffner took the horse and went to Watson Westfall's and sent him there; then told us we would meet on such and such place & back in the woods some place. Then we met and went on through the woods. After we got up there Watson Westfall told us we — soon get to the track of land that he wanted to show us. Then he went along for an hour or two along with us and then he left us and went home & give us a paper with writing — and said that we should go on as far as Isaac Simons', but not to say anything about what we are after or what we intend to do. He said we might say we wanted to buy black walnut.
307 Before we left Bukhannon Mr. T. D. Farnsworth said not to let anybody know. Then, when we arrived at Isaac Simons',

it was Saturday night, so we had to stay there over Sunday. Monday morning Mr. Westfall came, and then we went on further through the woods, and on the other side we came to some very nice land. Then Mr. Westfall told the driver to stop, and then we went out and looked around and he showed us some fine timber land and some good ground. Afterwards we went in the hack again and went along; then, after a good long ride, we stopped once more and we went out and he showed us still finer land & big trees. Then we asked him, Mr. Westfall, about whether he knows everything about the land, where the line runs. He said he did. He surveyed it a good many times. Then we went on a little further. Then he asked us whether that was enough—what we saw—and we said we were satisfied with what we did see about the land, if everything was as he stated. Then we drove down to Mr. Morgan's place and staid there over night. Then the next morning
we went on for Buckhannon. When we came there we
308 went to the hotel. D. D. T. Farnsworth and others came
to the hotel and asked us how we got along and how we liked it up in the woods; how the thing suit- us. We said all right. Then we went to supper. Then, afterwards, I think Farnsworth came there again to the hotel, and then we saw Mr. Thomas there. He came in between that time and he commenced talking and asked us that he heard that we wanted to buy land; that somebody must have told him before we came there that he was an agent and had this same tract of land for sale, and he said the man we brought along, Colonel Wood, from Clarksburg, is not fit to do business with; then he said he and Mr. Farnsworth and Mr. Cooper—that the three men can sell the tract of land. Then we went on talking and Mr. Thomas said, Go down to Mr. Farnsworth'- store. Then we talked the things over; then I took Thomas out—that is, I myself—and asked what the land could be bought for at the lowest; then he told me twenty thousand dollars. Then we went back to Farnsworth's store again; then Farnsworth said, Well, if we want to do business,
we — be.ter go upstairs, in the tailor shop, there is nobody
309 there but one man and he is all right, and told Mr. Farnsworth
that the land is sold for twenty thousand, and Farnsworth said they can't let it go for that; they must have something for their trouble. Then we asked him what it would be extra, and then he said five hundred dollars apiece. Then they sent off old man Cooper and said Cooper is getting old and never done much and his money we divide among ourselves. Of course, that was the end of it. Then, afterwards, we inquired and asked Mr. Farnsworth whether everything is straight and right, and he said everything is first-class titles; that we could rely upon him, and Thomas is a good man to-; just as good as himself; that he was one of the prominent men in this town; that he was president of the bank; church member—Methodist church, if I remember right—and he said or asked me what our mayor's name is in our city—in the city of Cleveland. I told him Mr. Herrick. He said, Is he a good man. I said, Yes, first rate. And he says, You take me in his place. I am just such a man as he is. Then afterward

he says, This is a bargain; and I would not do anything
310 what is not straight or right. He says I am getting old; one foot in the grave and the other not far from it, so he says. I have got enough to live all my lifetime, so I can't leave nothing except a good name to my children when I die. Afterwards Mr. Farnsworth drew up a few lines—kind of an agreement. Then my brother Joseph paid him $100 down and the balance in such and such a time. Farnsworth and Thomas said we need not be anxious; that it might be four or six weeks till they had seen all the parties; that they have to see all the parties—some living in Pennsylvania, some in Maryland, and some up in the mountains, all through; that when it come to make the deed not make it over 15,000; the other $5,000 they would need themselves. They would need that for lot of work. That's about all that I know of.

Whereupon the further taking of depositions was adjourned until 9 o'clock a. m., Jan. 28th, 1887, at the same place, C. L. Fish's office.

N. T. HORR, *Notary.*

JANUARY 28TH, 1887.

311 The taking of depositions was resumed at office of C. L. Fish, according to adjournment.

CHAS. DUFFNER (resumed), by HENRY M. RUSSELL:

Q. You spoke of Farnsworth & Thomas speaking of $500 apiece. For whom was this $500 apiece?

For Farnsworth; Thomas, from Beverly, and old man Cooper.

Q. Who signed the agreement or article that Farnsworth wrote at that time?

I think Jos. Duffner first; Chas. Duffner and Matthew Duffner. I think it was the same agreement and in evidence at the trial in Wheeling.

Q. State how it was that Jos. Duffner alone came to have the deed made to him.

I hadn't any money and Matthew Duffner hadn't either, so Joseph had to pay all himself; so we had to sign the thing over to him. I can't tell exactly.

Q. Were you at Simons' more than once?

No; only once.

Q. When there that time what, if anything, did Simons say about the title of the land afterwards conveyed to Jos. Duffner?

He didn't say anything.

312 Q. Did you have any conversation with D. D. T. Farnsworth in Cleveland at any time?

Yes; we had a talk, but not great deal. We passed usual greetings. He always had more business with my brother. I was mostly in the store; possibly saw him taking testimony at this (Fish's) office. I hadn't much of any conversation with him.

Closed.

Cross-examination by Judge JOHN BRANNON:

Q. You say Farnsworth asked you who was the mayor of Cleveland. State where this inquiry was made and if you are perfectly certain that he made that inquiry of you.

At Farnsworth's own store, in Buckhannon; I think up in the tailor shop. I am perfectly certain.

Q. Are you perfectly certain that Farnsworth had a store at that time in Buckhannon?

I think I am; at least he said, "We go down to my store." I don't know whether it was his or his son's.

313 Q. You speak of having been at Isaac Simons'. How long were you there?

From Saturday night till Monday morning.

Q. Did Westfall, the surveyor, during the time he was with you in the woods, in company with your brothers, Joseph and Matthew Duffner, take you to and show you any corner tree or line trees of the tract of land you were all there looking after?

He did.

Q. You say on the morning you started to go up to look at the land that Matthew Duffner went out by Westfall's in the country. State if you know whether anybody else went by Westfall's.

Not as I know.

Q. You state at the time $20,000, the amount of purchase-money about which you had been negotiating was talked of, that Farnsworth claimed $1,500 more. State whether the man Thomas, above referred to, is not the man who claimed more, and whether said Thomas and your brother Joseph did not arrange this matter of $6,500, and your brother Joseph agreed to pay him that sum of money if he could secure the title from the numerous owners.

314 Well, Joseph and Matthew Duffner didn't know anything about it. I called Thomas out myself and walked up and down on the sidewalk, and then I said, "You must say now the very lowest that you will take." Then he said $20,000; then we went back to Farnsworth's again; then I told my brother what Thomas said; then we told Mr. Farnsworth & Cooper, I think; then Farnsworth said it would be all right, but they had too much work and they got to have $500 each for their trouble; then we considered the matter over, and said, Well, we come down so far, and if everything is all right we will have to do so.

Q. State whether said Thomas speaks the German languages?

Thomas can speak German.

Q. Are you and your brother Joseph Germans?

We are both Germans and speak German.

And further deponent says not.

CHARLES DUFFNER.

WILLIAM E. RANSOM, being first duly sworn, deposes and sworn:

315 By HENRY M. RUSSELL:

State your name, age, occupation, and place of residence.

William E. Ransom; 31 years old; in the manufacturing business; residence, 61 Lake St., Cleveland.

Q. Are you acquainted with Mr. D. D. T. Farnsworth; and, if so, how and when did you become acquainted with him?

I am; I became acquainted with him late in spring of 1883. He was introduced to me by one of the Duffners, Joseph or his son, at my office, 144 Superior St., Cleveland. I was engaged in dealing in real estate, and money broker. Mr. Duffner, I understood, had made a deal with him and others for some West Va. land. A Mr. Thomas had been in our office previously, who was one of the parties, and I think Thomas was in the city at the time Farnsworth came to the office. Being in the real-estate business and trying to get trade on outside property, I talked with Thomas and Farnsworth in regard to West Va. land. During the conversation on West Va. land this large tract of Duffner's, or that Duffner was negotiating
for, was inquired into as regards timber, location, number of
316 acres, and title, and also titles or any and all lands that might
be procured through them by myself for other parties. Thomas told me separately that this large tract of land was one of the best bargains that he had ever seen. He then went into particulars how he went to Virginia. He stated that for years he was a resident of Pennsylvania and been in the tannery business; had been a member of the Legislature and was at one time very well off, his tannery alone being valued at something over $10,000. The tannery was burned down and other losses made him quite poor, and he went to West Virginia to start anew; had been there a number of years and, I think, was a resident of Beverly or near there. He had looked into titles of West Va. lands and had dealt a great deal in them, both as principal and agent, and was well posted with titles. He stated that the timber on the land of which he spoke as negotiating for by Duffner was beautiful & the facilities were first class for getting the timber out; that the full tract of land contained some 40,000 acres, but they guaranteed the Duffners some 23,000
acres. He said the title to this land was perfect. Then he
317 went into details about other pieces of land he had for trade
or sale and would be pleased to deal through us as agents. If he could make sales through us he would pay us a liberal commission. That was Mr. Thomas. He was in our office off and on some three weeks, if not more. He held a note against Mr. Jos. Duffner for $3,250, I believe, and was very eager to get the money on the note. He represented that parties who held the mortgage on his farm at Beverly was pressing him. He had to have the money and had offered a heavy discount. He first offered to take $50 less the face of the note. Then he came down to $2,800. I think, in a few days we secured a loan for Mr. Duffner so that he could take up these notes before maturity. Mr. Farnsworth was in our office, I am quite positive, three times—surely twice—about June or July, 1883; the last time only a moment. We had two offices—main and private. On one of Mr. Farnsworth's visits to our office he sat down with me at a desk in the main office and then told me all about this tract of land that Mr. Duff-

ner had negotiated or was negotiating for, and I then
318 talked with Mr. Farnsworth about Virginia land. He told me he was of very high standing in his native place; was president of a bank, was a prominent member of church, and I think he said at one time Governor of the State; gave a short history of himself and standing, and said that the title of this 40,000 a. Duffner tract was perfect, and, in his language, "beyond the shadow of a doubt;" that the tract originally contained about 40,000 a., but they, he and others—he said we—"guaranteed Mr. Duffner about 2,300 a.;" that the timber on this land was very fine, but he would advise Mr. Duffner not to touch the timber or the land, but let it lie as it was for ten years. He said that any land that he had anything to do with had perfect title; that a man of his standing in the community, being president of a bank—than he went over again what he had been—would not handle anything else. I was shown maps of this land in the office by Mr. Thomas—its boundaries on the map, how far it was from points of transportation—that and other land—and comments made on this particular land, and pointed out the best place in it and where the streams were,
319 prices of land, titles, the size of tracts. This particular tract was always represented to me & to Mr. J. Frusier, now dead, my partner in real-estate matters, and Wm. D. Hills and a man by name of Baldwin, a witness here, in my office—had been in my office several times looking at the maps, as one of the best bargains that had ever been snapped up in that section. In fact, the whole conversation drifted on to this particular piece of land—its merits, its facilities for getting the timber off; a great deal of talk of no import on other West Va. lands. Thomas was here most every day trying to get the money on that note. Mr. Farnsworth also stated to me that this was a wonderful bargain, and also stated that others were interested with him, and that he acted for the land and sold it at that price, as Mr. Duffner could never have got the bargain he did. He said that piece of land was worth many times the price Mr. Duffner paid for it. That was when he sat at the desk in the outer office; but he said, "I would advise Mr. Duffner, J., to wait ten years before he touched the land.

320 Q. Was Jos. Duffner present at any of the conversation-you have mentioned with Thomas or Farnsworth? If so, please indicate which.

Mr. Duffner was at the office a number of times, and I think he was present during general conversations between all parties, but Mr. Farnsworth sat with me at desk in outer office, and particularly rehearsed his history and standing and particular- regarding this land while there, but the general conversation in the office during all this time was principally on this land and Virginia land in general and titles, when all parties took part in the conversation.

Closed.

Cross-examination by JOHN BRANNON:

Q. You have stated that in the spring of 1883 you met with

Thomas, and after you met with Thomas in Cleveland that you met with Farnsworth in Cleveland. State, if you can, what time in the spring of 1883 this was.

I can't exactly remember month or day; possibly between April and latter part of June. These parties together and severally
321 were in the office a number of times in those matters, and I cannot easily fix any particular time. We invited them to make our office their headquarters whenever in Cleveland, and I think they did.

Q. Had you known Thomas or Farnsworth before the time of which you speak?

I never met Thomas or Farnsworth before that time, when they were brought to the office and introduced by Mr. Duffner.

Q. Do you know of Mr. Fish, an attorney of this city, going with Jos. Duffner to West Va. to examine into this land?

I have only heard; couldn't swear that he went from my personal knowledge.

Q. Did you learn of it from said Fish or Jos. Duffner?

I think from Matthew Duffner first, and then afterwards from Jos. Duffner.

Q. State whether the conversation you have detailed with Thomas and Farnsworth occurred before or after the time Fish and Duffner went to West Va. for the purpose aforesaid.

322 I could not tell the time. I do *do* not know when Mr. Fish went with Duffner.

Q. State whether, at the time of the conversation referred to with Thomas and Farnsworth, Duffner had obtained from Farnsworth and others a deed for the land.

I think Mr. Duffner told me at some period during these conversations that he had the deed—that is, during the period of these parties—Thomas and Farnsworth and others—coming into my office.

Q. Had you met with Farnsworth in Cleveland before you had met with Thomas?

I met Thomas first and a short time afterwards Farnsworth.

And further deponent says not.

WM. E. RANSOM.

JOSEPH DUFFNER, being first duly sworn, deposes and says:

By HENRY M. RUSSELL:

State your name, age, residence, and occupation.

Joseph Duffner; sixty years old; crockery business; Ontario St., Cleveland, Ohio.

Q. Are you the plaintiff in this suit?

323 Yes, sir.

Q. Please recount at length your transaction with regard to the purchase of land in West Va.

In the spring of 1883 Matthew Duffner came from east Va. through Oakland, Md.; saw a man there by name of Col. Wood, who told him

he had a nice tract of land in West Va. A few weeks after that I and Matthew and Charles Duffner agreed to go down and look at the land. We went from here to Grafton, then to Clarksburg; waited there a little while for Col. Wood. It was in the evening—kind o' dark—when he came on the train; went then to Weston; got there little late in evening; stopped over night there in a hotel name- Vonsel, I think; made arrangement to go to Buckhannon next morning; got a hack across the road; got to Buckhannon late in the afternoon; went to Farrel's Hotel. After we got there a short time Col. Wood went out and said he would go and see some of the parties. Little later he came in with this Daniel D. T. Farnsworth. We had a talk with him—Farnsworth—& Wood for a while in the hotel. Same evening,
324 little later, Watson Westfall, county surveyor, came in (we were talking about going — look at this tract of land upon Buckhannon river), who should show us the land and who would go with us. Mr. Farnsworth said Watson Westfall, the county surveyor, would be the best. He would know all the lines and the land, because in surveying through there a good many times—Watson Westfall. We talked it up with Farnsworth then, who said Westfall would be the best man; that he would go along with us and show us everything; so we and Farnsworth and Westfall arranged to go early next morning. Me and Charles Duffner and driver went in a hack and Matthew Duffner had a little horse and went towards Watson Westfall's, 2 or 3 miles up from Buckhannon; so we went on, and about eight miles up, by a mill, we crossed the river, and we were there a little while first with the hack, and Westfall and Matthew Duffner came along on horseback. We went on for about an hour, nearly, and Watson Westfall said he wanted to go back; it was on Saturday; take both horses back; give
325 us a letter and told us we should go on up to Isaac Simons'. We went on good long while; perhaps two or three hours; got up to a high mountain; a little store; few more little houses; blacksmiths' shops, etc., around. Isaac Simons' son keeps that store. We stopped there a little while; had a little lunch. Short time old Isaac Simons came up from his home, five or six miles, on horseback; brought some eggs and took some groceries for them. Son said that was his father; introduced to him. Some *of another* men had the letters, and we gave him the letter and said we were sent by Westfall to him to stop over Sunday. Soon after we went down towards his home. Little ways off he left us, saying he had to go to a mill near there and get something there. When we got to his home he was there already. We had a kind of bad road; got there pretty late in evening; stopped there over Sunday. Monday morning Westfall came on horseback, pretty early, said came up aways Sunday afternoon and stopped with a daughter or son in the woods. We went on Monday morning. Westfall showed us some land- soon after we left and said they
326 were on the tract. We went on a good long ways. He showed us the lines and the timber; got off some 5 to 6 miles. He showed us also the trees—oak, walnut, poplar, and once some

hemlock; many places where he said "this is the line," and again places "this is out of the line and don't belong to this;" went on further & then he showed us what I think the nicest tract we have seen, and then we stopped there a while and he showed us the timber and location; showed us the chestnut tree—the biggest tree in the woods; that was the greatest, nicest timber—walnut, poplar, some white oak; went further; stopped once more; late in the afternoon went towards Morgan's mill. Westfall said it was about the only place we could stop over night; next morning took road towards Buckhannon again. Westfall said it took us through the land a good ways yet. Morgan's mill, he said, was out of this tract. Late in the evening got to Buckhannon; also showed us land, trees, and lines going back to Buckhannon; got to hotel then. Mr. Farnsworth was there; asked us how the land was & what we had
327 seen and how the timber was; asked us all how we liked it. We told him we saw nice timber. Later, in hotel, we saw a man by name of Thomas. We first asked for Col. Wood, when we got to the hotel. These, Farnsworth, Farrel, & perhaps others, said Col. Wood was drunk since we left; had one bottle of whiskey after another; say he made a big muss in the room right across from the office. Had a little talk that night about the land, I and Farnsworth, and Thomas said he was one of the men, too. Farnsworth said that evening, "If you intend to buy this land, we are the right parties; you couldn't do anything with Woods. He had been drunk for three or four days. Farnsworth said, "Me & Thomas and Cooper are a committee; we can and will sell this land to you. I think you can't do anything with a drunken man." He said that again. We talked a little while there yet that evening. He said it is late to-night now; if we want to buy the land we should come up to-morrow morning into his store. So we went up the next morning to his store; talked a little while; showed us the store; went upstairs to the tailor shop, where he
328 said — better go to do business and have a talk. We closed the door; think Farnsworth did. We were I and Chas. Duffner and Matthew Duffner, Thomas, Cooper, and Farnsworth. My brother Charley had a talk with Thomas alone, & I heard from him that the land could be bought that we had looked at for $20,000. Farnsworth says that can't be done; that they had to pay the $20,000 out and must have something for themselves—he and Thomas and Cooper—they should each have $500. After talking a good while we agreed to pay them the $21,500 if they could furnish us a good title. They all said they would furnish us a good title, specially Farnsworth, without any doubt. They would not handle any land or anything to which they could not give a good title. Thomas said he had been in the Pennsylvania Legislature and he wouldn't do anything wrong. Farnsworth said he was president of that little bank and senator and member of the church and fixing up another church above there, and, I believe, Governor for a short time, a good deal of stock in that new railroad coming up from Weston, and we are *are* all old, responsible cit-zens. He said, We
329 all lived here for 25 or 30 years and you have nothing to do

with agents. He said, Your title is without any doubt. All the other land he had in charge was good title. He wouldn't handle any land that didn't have good title. He had other small tracts in charge. So the way all, especially Farnsworth, recommended themselves we thought they couldn't fail to give us a good title. Then we commenced closing the bargain & Farnsworth commenced procuring some papers—a contract. Cooper went out or was sent out—I couldn't say which—and Farnsworth said that he and Thomas would keep the $1,500 for themselves, as Cooper was an old man and couldn't do much. They had a great deal of work and labor & would have to go a good deal on the train, and then Cooper wouldn't need anything. Then, after going a little further with writing of the contract, Farnsworth stopped a little and said they only wanted to put $15,000 in that deed—in the contract paper. Farnsworth said, and Thomas too, that it would be a pretty hard job to get that deed fixed up, and that they wanted to put only $15,000 in the deed or in that contract first; said it might cost them a great deal on the railroad, getting around to see all the parties, and in
that case they must have that $6,500 for them two—
330 half for him and half for Thomas. He wrote two extra little
agreements for that. We had a kind of agreement to pay them that money later; that money was agreed to be paid by us some time later in the fall. Then after he was done with them writings I paid him $100 down; the bargain was made $2,000 about the 1st of May, 1883, and balance when deeds were done. Some time later, a month or six weeks, in latter part of June, I think, I came to Mr. Fish and try to take him along up to Buckhannon. When court adjourned, end of June or 1st July, Fish went along with me. We went to hotel. Farnsworth came there soon and Fish went next morning to court-house at Buckhannon and looked up some books there that they handed him—they meaning Henry and Watson Westfall. Watson there a good deal; Cooper there once or twice or more. Fish looked up the books for day an- half, I think; that was in clerk's office in court-house. After while Mr. Fish says he thinks that from what he seen and what Farnsworth, Henry Westfall, Watson Westfall, Cooper, and all of them say to him that it
would be all right. He talked to me a little time and said
331 he found just about what all those men stated to him, Farnsworth and all of them. He told me that those men were responsible men and would do nothing wrong. I think Farnsworth stood up and says, "Everything, gentlemen, is all right and straight." After Farnsworth made a little speech I had a short talk with Mr. Fish; then after that Mr. Fish thought I could pay them the money and they could hand us the deed; guess the deed was made out; then I give Farnsworth a check for the money; then he gave us the deed. I think the deed was left there then to be recorded. I went down with Farnsworth, who said he would put the check in the little bank, and he throwed the check into the bank and said he would leave it then till morning or next, till he got ready to settle with the parties; the check was for $12,900. Then we went back to the court-house, where Mr. Fish was yet. On the way, on the side-

walk, going back, Farnsworth says, "Duffner, you got the greatest bargain in this piece of land that ever anybody could have. Shortly after we went to the hotel—Fish and I don't know who went along; wanted to start home for Cleveland; no train went; had
332 to stay over till next day. Fish went same evening up to clerk's office and looked something up again.

Q. Do you know how Watson Westfall came to meet you the first evening you got to Buckhannon with Charles and Matthew Duffner?

I think Mr. Farnsworth sent for him, the way I hear. Farnsworth and others were talking about getting him to go into the wood. Matthew and Charles Duffner were all there.

Q. Why did you start from Buckhannon Saturday evening instead of waiting over till Monday morning?

Farnsworth and Westfall said perhaps it would be better to start then, and we thought we might not have to lay so long around. Farnsworth and Westfall said we could stop up at Simons' over Sunday. Driver said he wanted to get back again by Wednesday. He came from Weston and said he wanted to get home again.

Q. Were you told anything by any one about not speaking of the object of your visit? If so, what was it and who told you?

333 Yes, sir; Farnsworth, Thomas, and Westfall told us we better say nothing about our business. They said, especially Farnsworth, we should not say anything about wanting to look up some land or buying some land. Farnsworth said if we should say anything to say you are looking for timber—black walnut—and say nothing about land.

Q. Did those men say why they didn't want you to speak of the object of your visit?

I couldn't say particularly. He said something—I think something about the settlers who lived there. I couldn't mention his language.

Q. Before you, Charles, and Matthew went up to look at the land did Farnsworth or Thomas tell you anything about the title to this tract?

Thomas was not there. He only came later, after we got back from the woods. Farnsworth said few words about it. We didn't ask much about it. We wanted to see land first; think he said it was a nice large piece of timber land with good title.

334 Q. While Westfall was showing you the land did he say anything about the title?

Yes, sir; he said he knew it was a good title; that he had some share in the land that he had sold shortly before.

Q. Did he tell you anything about Thomas or Farnsworth or their characters?

He spoke about Farnsworth, not about Thomas. He said Farnsworth was a very responsible party, owned a good deal of property—saw-mill, flour-mill, store, and island with a nice house on it, a great piece of land on the island in Buckhannon, owned a big piece of land, 600–700 a., above Buckhannon about five miles; that he,

Farnsworth, would not sell anything, any land, what wasn't a straight, good title.

Q. While you were at Isaac Simons' that time with Charles and Matthew, did Simons say anything about the title or anything about Farnsworth or Thomas?

We had no conversation about the title or about those men at all.

335 Q. You spoke of having paid $100 when — contract was signed and $12,900 when you got your deed. What other payments did you make on the $21,500 you agreed to pay, and how and when and to whom did you make them?

$2,000 I sent to Mr. Farnsworth before—perhaps two or three weeks before—Fish and I went up there; sent by check. After me and Fish came back from Buckhannon, about July, I paid Mr. Thomas his share of the money. I forget just how much; whether $2,800 or $3,000; somewhere there. He wanted the money bad and I borrowed it to pay him. Farnsworth got his money later, in August, I think. When Thomas got his money and was going home he and I had a talk about Farnsworth wanting the money. Thomas said he would ask him how much he would take for his $3,200. I had a letter from Farnsworth that he would take $2,800. It laid along. He came down for his money, and when he came and ask me I tell him I send a certified check off the day before to him for $2,800. I think he had a note in bank, Wicks' bank, or something; I forgot about that. He went to Wicks and asked if the
336 draft was gone for him. Wicks told me of it the same afternoon.

Q: When you made the several payments which you have mentioned state whether or not you believed in and relied on the various statements and representations which had been made to you by Farnsworth and Thomas, as you have stated, with reference to the title of the land and with reference to the characters of those two men.

Yes, sir; I believed everything all right and straight, the way they made their representations to me.

Q. Before you went up to Buckhannon with Mr. Fish did you have a conversation with Farnsworth in Cleveland about the lawyers at Buckhannon and Weston and in that section generally?

Yes; we spoke about the lawyers at Buckhannon. I don't remember particularly about Weston. He said there was two or three lawyers in Buckhannon, but they didn't amount to anything; they were not responsible.

Q. Did he give you any advice about employing a Cleveland lawyer?

337 I told him I thought of taking Mr. Fish along. We were here in this office. He said, "I would be very glad to have you bring Mr. Fish along; I would like to see him up there." Up in Buckhannon he told me he thought Mr. Fish was the smartest lawyer and the hardest lawyers he ever see.

Q. When you were at Isaac Simons' with Baldwin and Schmieder,

what, if anything, did Simon say about the title to the land you had bought?

I was a good little ways ahead of those fellows. I was looking for blackberries. Simon was over in the hay field and two or three more. I didn't really hear anything.

Q. In addition to the payments that you contracted to make, did you incur any expenses in looking after and attempting to take possession of the land? And, if so, state what they were.

I sent Charles Schmieder up; gave him some money along; I couldn't state how much, and sent him $200 some time later, and I think another $35 later; that was all I gave him; I guess I gave him $50 or $75 along the first time.

Q. Did you incur any other expenses?

338 Yes, sir; I had the title examined. It cost me $350 or $375. I had it done by J. Weiss Norton, of Wheeling, and the expenses I had going up and down, some $200 odd dollars.

Q. State whether you ever got the land you bought of those men or any of it.

No, sir; they couldn't show me any. Never could get possession.

Closed.

Cross-examination by JOHN BRANNON:

Q. Did D. D. T. Farnsworth have any communication, correspondence, or otherwise have anything to do in having you go to Buckhannon with a view of purcha-ing, to see the land in question?

No, sir; never saw him before we got to Buckhannon in the hotel.

Q. Did you not employ and pay Watson Westfall, the surveyor, to go with you at the time you went to see the land?

I did not employ him; Farnsworth did; but he made out in his talk here that I should pay Westfall. He wouldn't pay anything. I paid Westfall.

339 Q. Did Farnsworth ever go with you on the land and did he not tell you that he was not acquainted with the boundaries?

He did not go with us. He said he had been through the land several times; but Westfall could show us the boundaries better; that Westfall would point out the lines, etc.

Q. Now, state positively whether you had any conversation with said Farnsworth, in the town of Buckhannon or elsewhere, in respect to this land or about going to see it when you first went to Buckhannon until after you, your brother Charles, and son Matthew had returned from seeing the land.

Yes, sir; I had a long conversation with him in Farrell's Hotel, called the Valley House.

Q. Are you positive in your statement that Farnsworth came into the Valley Hotel when you first reached Buckhannon, before you went to see the land, talked to you about it, the title, and stated to you that Westfall would be the best man to go with you to see the land?

Yes, sir; I am positive; shortly after we arrived; more than one conversation.

340 Q. State who was present at the conversation you speak of at the hotel before you went to see the land with Farnsworth.

Myself, Charles Duffner, Matthew Duffner, Farnsworth, Watson Westfall; Westfall came later; Farrell went in and out there a good deal.

Q. Did you hunt up and find the said Farnsworth after you returned from seeing the land and tell him you wanted to buy it?

When we came back Mr. Farnsworth was right there at the hotel; before we got into the room he asked us what we seen; how the land suited us; told him we saw nice timber and some nice land. He was asking us if we wanted to buy the land. We didn't know what they did ask and wanted to see if we could get it right.

Q. You say you went up to Buckhannon from Oakland with a Colonel Wood. State the price Col. Wood stated the land could be bought for.

I could not say positively. I think he said dollar and a half to two dollars an acre. We didn't talk much about that.

341 Q. Did you not, upon the occasion of your visit to see the land with Westfall, in going, while there, or in returning, inform said Westfall that said Col. Woods stated the land could be bought for $40,000; and then did not said Westfall say to you that *that* the owner had offered it at $20,000, and that he supposed that he could buy it of the parties in Buckhannon at $20,000?

No, sir; not of my recollection.

Q. Did you not propose to the said Westfall, at some of the times mentioned in the preceding questions, to give him $200 if he could enable you and your associates to buy the land at $20,000?

I had no such a conversation ever with Westfall.

Q. Did you not, after you, Charles Duffner, and Matthew Duffner had proposed by the paper signed by you three alone to purchase the land, demand that the deed for the land should be made to you alone?

Some time later Charles and Matthew Duffner had no money and I talked with Mr. Fish and he said the deed should be made

342 out in my name. I think Fish wrote a *a* letter to Mr. Farnsworth. Soon after Farnsworth came to Cleveland and in Fish's house, and later in his office, changed the papers.

Q. Did not Farnsworth refuse to have the deed made to you alone, and was not the deed made to all three jointly?

No, sir. He and Fish talked it up and soon after they changed the papers. I talked over it in a wine-house near the market; told Farnsworth then that I had to raise the money. Fish gave me the advice to have the deed in my name.

Q. State why it was that you accepted a deed from Charles Duffner and Matthew Duffner to you for their interest in the land.

I don't know why. I thought I had to raise all the money and better have the deed in my name.

Q. You speak of Farnsworth, after Fish wrote to him, coming to

Cleveland. State whether you did not then say to Farnsworth that you had paid $100 and $2,000; that if you did not get the
343 deed you might lose the same; and did not Farnsworth then agree with you that if the deed was not obtained he would be responsible for the said two sums of money or the $2,000, and did not he sign at that time a paper to you to that effect, with some further provisions for forfeiture, etc.?

Had no conversation like that with Farnsworth; think $2,000 was not yet paid when he came to Cleveland. He had a little contract paper for $3,000 and some odd, and he liked to have that changed into another note. He sat right there (pointing to a place in Fish's office) and I there with him. Fish saw he was writing there, and Fish says, "What have you got there?" Farnsworth came out and let him see it and had a little talk, and Fish said then we might change it somehow for another note for the same amount. Fish or he changed it. I gave another note. He wrote it. I didn't want to do anything without Fish was right there. Fish talked to him about the contract. Fish said Farnsworth wrote it all in Farnsworth- favor.

Q. State when it was, with reference to the occurrence last spoken of, that you had Mr. Fish go with you to Buckhannon to examine into the title of the land.

344 It was after Farnsworth was here.

Q. What is Mr. Fish's profession?

He is a lawyer.

Q. How long did you know Mr. Fish before he went with you to Buckhannon, and where?

15 or 20 years; in Cleveland.

Q. Did you ever have, before you were engaged in this land negotions, Mr. Fish employed professionally by you?

I had him in some lawsuits in Cleveland.

Q. State whether, after the examination had been made in the clerk's office at Buckhannon by Mr. Fish, you did not, at the depot at said town, when about to depart with Mr. Fish on your return, in a conversation then had with a man who told you his name was W. D. Farnsworth, state that after examination that the title had been found to be as the parties had represented, and that you were satisfied with the title, and that you had found it better than it had been represented to you.

Had no such a conversation at the depot.

Q. Do you know a German in town of Weston, which you pass through on your way to Buckhannon, named Frederick Brinckman?

345 Yes; I saw him with Baldwin and Schmieder in August, after I had bought the land. That was the first time I saw him.

Q. Did not the same Frederick Brinckman, when you were first on your way through said town, Weston, say to you that you had better be careful, that tax title was generally bad, and that you had better, before you paid your money, employ counsel in the county to examine the title, and give to you the names of several counsel

who, from their familiarity with land-title questions, could give you correct information; and did you not state to him that you had counsel in Cleveland that you could rely upon, and before you paid your money you would have him come to Buckhannon to examine the title?

Did not know him then; had no conversation with him whatever.

Q. Do you know a man in Buckhannon, who speaks German, by the name of Charles Fischer?

Yes, sir.

Q. Did not the said Fischer, at the time Mr. Fish was with you at Buckhannon to investigate the title, say to you that tax
346 titles are very doubtful, and that if you proposed to buying any such that you had better keep your eyes open or your hands on your pocket-book, for he regarded these tax titles no good, and did you not respond that you had your friend, Mr. Fish, a lawyer, whom you had long known, and that you would do nothing unless he was satisfied with his investigation of titles, or words to that import?

Had no such conversation with that Fischer.

Q. Did you in Buckhannon, while you and Mr. Fish were then together, meet at the clerk's office in said town with Mr. Jasper N. Westfall, assessor of lands?

I don't recollect.

Q. Do you remember of going out of clerk's office, while Mr. Fish was investigating a title with Jasper N. Westfall, to the end of the portico in front of said clerk's office, & did not this said Westfall say to you that the title to the land you was then having looked into was tax titles, and that he had better be very careful before he pays his money for it, & did you not respond that you had Mr.
347 Fish there, your attorney, and that you would not pay unless he was satisfied after investigation?

I had no such conversation with any of them in front of the court-house.

Q. Upon the occasion of your first visit to Isaac Simons, when you went to look at the land in question, did not Mr. Simons call your attention to the fact that he was living on the tract of land you was looking for & under a different & hostile title, and that there were other conflicting claims to large parts of it?

I did not speak anything about titles or land & had no conversation whatever about land or titles with Simons or any of them.

Q. Did you not on the occasion of your said first visit to Simons have a conversation with Watson Westfall & Simons about the land in question—the title to it and the conflicting claims to it & about persons living on it under hostile title?

No, sir; did not speak anything at all about it.

Q. Do you remember an old gentleman in the town of
348 Buckhannon named Henry F. Westfall?

Yes, sir; I did. I saw him in the clerk's office with Mr. Fish.

Q. Do you remember after Mr. Fish had concluded his investiga-

tion in the clerk's office about the said land & after he said to you that he thought it was all right & you could pay your money, & thereafter the deed for the land was read over & examined by Mr. Fish in the clerk's office, & that Mr. Fish remarked to you, "Why, I thought the consideration of the purchase was twenty thousand dollars, as you told me, but this recites the consideration to be fifteen thousand dollars," and that you then remarked to Mr. Fish, Well, well, that's all right; that is understood; that is what the land was sold for to me?

No such conversation with Westfall or any of them in the court-house.

Q. In going over the land as pointed out to you by Watson Westfall, did you not discover that a very large portion of the survey was in forest and unoccupied?

349 Well, there was a good deal unoccupied and a good many squatters all through.

Q. Did you not meet with Mr. George Henning in the city of Wheeling after you had determined to bring suit about this matter, & why did you not then have process served on him, as he was one of the parties to deed to you?

Never saw him in Wheeling; never knew him; never had a conversation with him.

Q. Do you know John A. Crislip, one of the grantors of the land to you?

No, sir; do not know him.

Q. Was the said George Henning introduced to you in the city of Wheeling by the said John A. Crislip?

No, sir; was not; don't know either of them.

Q. Did not Henry Stamm, a hotel proprietor in the city of Wheeling, introduce you to the said George Henning in the presence of the said Crislip?

No, sir; did not.

And further deponent saith not.

JOS. DUFFNER.

350 Whereupon the further taking of depositions was postponed till 9 o'clock a. m., January 29th, 1887, at C. L. Fish's office.

N. T. HORR, *Notary.*

SATURDAY MORNING, *January* 29, 1887.

Present: Henry M. Russell and John Brannon and parties.

Taking of the depositions continued.

CHARLES L. FISH, being first duly sworn, says and deposes:

By HENRY M. RUSSELL:

State your name, age, occupation, and place of residence.

Charles L. Fish; 68 years old; lawyer; Cleveland, O.

Q. Where have you practiced law?

In Cleveland, principally. My place of business has always been

here. When doing business elsewhere it has been temporarily to attend to some case. For instance, in Toledo or Detroit.

Q. Have you ever been a practicing attorney of any other State than Ohio?

No, sir.

Q. Please state fully all you had to do with Joseph Duffner-'

351 purchase of land in West Virginia, including any conversations you may have had in Cleveland with any of the defendants.

The first business I did in that connection I made some papers, signed by Charles and Matthew Duffner, transfer-ing whatever interest they had to Jos. Duffner in lands in West Va. under a contract entered into between the three Duffners and, I think, Dan'l D. T. Farnsworth and others, acting as trustee or agents for themselves and other parties, providing for the sale of said property to three Duffners made some time before. I drew them here in the office. D. D. T. Farnsworth and Jos. Duffner were here in the office when I was working at those papers. I was sitting at the desk at which notary is now writing, and Mr. Duffner and Mr. Farnsworth were on the opposite side of the room at a table. Mr. Farnsworth had writing materials and was writing a portion of the time on the table. I have no recollection of and paid no attention to their conversation; was occupied with my work. until Mr. Farnsworth got through writing, and he was having Duffner sign a paper, and I thought would see it. I asked what that was about, and it was handed

to me. I saw it was a note made payable, I think,

352 by Jos. Duffner to Mr. Farnsworth; forget the amount. Mr. Farnsworth and Mr. Duffner, early in the morning of that day, came to my house and Mr. Farnsworth was introduced to me as — gentleman from Buckhannon, West Va., and the principal man active in connection with the land purchase; said he had arrived that morning and was anxious to get away that day. They both wanted me to come down to the office and fix the papers so that Mr. Jos. Duffner would be entitled to a deed, and Farnsworth and his associates could execute one directly to him, and I came right down here to the office as expeditiously as I could and made papers for that purpose for Matthew and Charles Duffner to sign; don't know if they signed that day. Mr. Farnsworth was anxious to know that they might execute deed without unnecessary trouble, and to be released from the other parties, and to know definitely. That was all he seemed to desire on that occasion. Mr. Farnsworth and Duffner left here some time in forenoon and, I think, before I had the papers ready; signed them subsequently.

Next connection I had was when I went with Duffner to

353 Buckhannon; left here 10th July, 1883, Tuesday; went to Grafton that day, and next day in forenoon, about 11 o'clock, reached Weston, and, for lack of train, staid there all day and all night. Next morning we took a construction train on a new road building over to Buckhannon. We arrived in Buckhannon about 10 a. m. of July 11th, and as we stepped onto the platform at the depot we were met by D. D. T. Farnsworth, Henry F. Westfall, and,

I think, Mr. Cooper, who walked with us up to a hotel, perhaps Valley Hotel; don't know name; went into sitting-room and they remained with us about an hour; general conversation about county, its history, political, and their connection with it. They informed us that Cooper had been a clerk in county court there for a number of years and Henry F. Westfall a deputy in that office, and that Mr. Farnsworth had been a prominent man politically and financially there. They stated Cooper & Westfall was able to render a great deal of assistance in the investigation we might desire to make at the court-house. We all, Duffner, Farnsworth, Cooper, Westfall, & I, went to county clerk's office of Upshur county, West Va., and there Westfall & Cooper, former principally, got the books and papers in relation to the assessor's lists of property
354 for taxation and the return made by sheriff or collector of the lists of taxes of lands on which taxes hadn't been paid; then the list of property sold. These lists extended over several years back. I examined them. They furnished me the statutes of the State in regard to assessment, collection, and sale for non-payment of taxes. There about an hour. Then we went to dinner at the hotel. Farnsworth went with us to hotel and then said he was going to his dinner, at his residence, I suppose. Had dinner and by time we got out at front of hotel Farnsworth was there and we went back to court-house, clerk's office. Henry Westfall, Cooper, & Watson Westfall were there, who was said to be a surveyor and knew a good deal about the land; several other parties in and out; some remained some time. I was busy reading up the State statutes and examining these lists and tax paper and books, and continued that examination till Saturday afternoon, just after dinner, July 14th, 1883, during all the time we were there, at office hours of the clerk, and I was engaged in that business of familiarizing myself with the law and trying to apply the law to the facts to get at the legal
355 effect of the different steps as bearing on the sale. The property was listed in the name of Wm. H. Morton, 40,000 a., and sold for taxes of year- 1875, 1876, in 1877. Then I examined the report of the surveyor, and also, I think, that was made to the clerk of the court, and a deed made by clerk of the court, McWhorter, I think, of this 40,000 a., which Farnsworth, Westfall, and Cooper called the Wm. H. Morton tract, to George Henning and others and embracing Mr. D. D. T. Farnsworth and the Westfalls. There was another deed of George Henning's and many others, including Farnsworth, Cooper, Henry F. Westfall, and another Farnsworth with 3 initials, to Mr. Duffner, which I examined, but the grantors in that deed didn't embrace all the grantees in the other deed made by the county clerk, and these were some grantors who were not grantees in the clerk's deed. Some transfers had been made by former grantees to the grantors in the last deed. I may be a little mistaken; some of the purchasers at the tax sale made by the sheriff had transferred their interest to other parties before the deed was made by the clerk of the county court. All those documents I examined in
356 order to determine whether the proper parties were making the deed to Duffner. One man, a purchaser at tax sale, had been

dropped out by some forfeiture in the contract. He took one share in the investment. There was some agreement between the purchasers at tax sale by which interest divided into shares and each party was described & No. of shares was a condition by which, if either contracting party should fail to pay his proportion of taxes and others assumed it, he would forfeit all interest and his interest would vest in the other parties. One man—Loudon, I think—lost his interest in that way. He was not a grantor to Duffner. Westfall and Farnsworth claimed Loudon's part now belonged to the other parties, and all the other parties to the tax sale were represented in the sheriff's deed personally or by their assignees, and also in the deed to Mr. Duffner purchaser at tax-sale were grantors or the assignees of those who had assigned their interest, so that all interested in tax sale (except that of Loudon represented by the other parties by reason of the contract) were represented in the deed to Duffner. While examining the tax lists and papers I ob-
357 served that anterior to this sale by the sheriff of the 40,000 a. in name of Wm. H. Norton this 40,000 a. had been listed by assessors for taxation and sold for the non-payment of taxes to the State of West Va.; and I inquired of Henry F. Westfall and D. D. T. Farnsworth and Cooper, all being there, why, when the 40,000 a. was listed in the name of Wilson by the assessor, returned delinquent for non-payment of taxes, & sold by sheriff for non-payment of taxes, they didn't buy it, and Westfall said that Wilson (Thomas) they knew was not the owner of the land, and therefore didn't buy it; that they knew that Wm. H. Norton was owner of the land, and when listed in his name and returned delinquent and offered for sale for non-payment of taxes they bought it because they knew they would acquire a good title, and D. D. T. Farnsworth then said that they had acquired a good title to that property by the purchase of the land when sold for non-payment of taxes being listed to Wm. H. Norton, for they knew he was the owner of the property, and they didn't buy when the land was sold for the non-payment of taxes when listed in the name of Thomas Wilson, for they knew he was
358 not the owner, and that they had now a good title to that property, subject only to the right of Wm. H. Morton to redeem the land from the tax sale, and that a lawyer had been there from New York in behalf of Wm. H. Morton and had spent some two or three weeks to see whether the property could be redeemed from that sale in Upshur Co. and also in Randolph and another Co., and that he had a conversation with this lawyer after he had spent two or three weeks in investigating to see if he could not redeem the land for Morton, and in that conversation the lawyer told him that he had come to the conclusion that the property couldn't be redeemed, and the lawyer went away soon after and he hadn't seen or heard of him or of Wm. H. Morton since. After examining what I have described I announced to those gentlemen, Farnsworth, Duffner, Cooper, Henry F. Westfall, that I couldn't find anything out of the way in this tax sale, so far as I had examined it, and I had examined it, and I had endeavored to be particular in regard

to details of the business. Then I inquired of them if any of
359 these parties, since the deed was made by the clerk of county
court, had made a mortgage affecting this property, and whether any judgments had been rendered against them that might affect their interest in the property, and Mr. Henry F. Westfall — that there had not been any mortgages given or any judgments rendered. He seemed to be familiar with the office and said that he was familiar with all the affairs of the office. I then (Saturday about noon) said to Mr. Duffner in the clerk's office, in presence of Cooper, D. D. T. Farnsworth, and Henry F. Westfall, that, so far as I had been examining proceedings in this tax sale, the deed given them by the clerk and by them to Duffner, I found their representations to be correct, and I thought he could rely on their representations about the title being in Morton *was* when the tax sale was made, and also in regard to mortgage- mad- by or judgments against the grantees under the sheriff's deed, & that I didn't think it necessary to go further to examine the records of deeds or mortgages, and that they might safely take the property and pay his money. Henry Westfall then said, "Well, the books are all here, you can look and see that all is as we have represented." D. D. T. Farnsworth stood up
and made a little speech, saying that Mr. Fish had made a very
360 thorough examination of those tax proceedings; that they had represented the facts in connection with that property; but, however, the books were there, and if I had any doubts about it I could examine them. I replied I had confidence in their statements; thought they were men who would not misrepresent; thought Duffner could make the purchase safely. I then wanted to make a list before deed passed and money paid or look over the list more carefully of the names of the purchasers at the tax sale and then of the list of the grantors in the deed to Duffner and of the names — who had assigned their interest under the tax sale and their assignees, as there was so many that I couldn't carry them in my mind. I wanted to compare and check them off to be certain I hadn't missed any and that there was no mistake. We went to dinner and about 2 o'clock Saturday we met in the clerk's office again, and I compared and checked off, so that I was satisfied I had the names correctly and that the proper names were in the deed to Mr. Duffner. After having some talk about the acknowledgment of one of Henning's—
a wife—of the deed and some explanation was made by Henry
361 F. Westfall, D. D. T. Farnsworth, and Cooper with regard to that, I felt satisfied from their explanation that the acknowledgment was good under the laws of Pennsylvania and under the laws of West Va., and then I told Mr Duffner he could take the deed and pay whatever he was to pay; and the deed was passed over by Mr. Farnsworth and Duffner passed him a certified check, and then we left the clerk's office at once and went to hotel and got our hand satchels and went down to depot, supposing construction train would leave shortly. We waited at depot for train which was not on road; was expecting it back to go to Weston; think Henry F. Westfall — there with us. He came down there. The train wouldn't come down there that night, but go directly to Weston from where work-

ing. We went back to hotel and I went over to clerk's office, and, I think, there I found Henry F. Westfall (knew I saw him somewhere); went to make copies of these lists pertaining to tax sale, having that time on my hands; went to work at that, and Mr. Henry Westfall was copying some paper for a man who was coming in—doing it for the clerk. I was there making copies; clerk wanted to close the office. I asked leave to come, then, in the evening. I was not
362 through; told him I wanted to finish. He gave me a lamp and a key, and I went over after supper and resumed work; was there till 9 o'clock p. m. Monday morning got up at daylight and went over, and I got through copying and thought — would look at records of deeds to get claim of title from Wilson down, as it was his patent from which this title came, thinking it might be of service to Duffner afterwards if he wanted to make an abstract to show here, to show how he derived title if he desired to make a sale, and as I had time and it might save expense of going down there some time, and I found the records of deeds in the office and commenced with several books and worked back. I got back as far as 1876. I struck a record of a deed to Wm. H. Morton, took memorandum of that, went on, & very soon struck another deed by Geo. W. Howard (no deed to Morton was by Howard) of this 40,000 a. of land. Deed to Morton by Howard bore date 1873. This other deed, recorded in 1876, or what purported to be a deed made by a trustee named John Peter Dumas, by one Raquet, under power of attorney, to Geo. W. Howard. That deed bore date 1840, and the
363 description of premises corresponded with that in other deed and in one of the land when sold for taxes; also found record of another deed purporting to be made by Thos. Wilson to Jos. Swam, recorded 1876. I failed to find record of any patent. I think I found one or two mortgages; don't recollect particularly about them. I left the clerk's office; went to hotel for breakfast; left before anybody came; had no conversation with any one about these examinations and discoveries; didn't go to clerk's office again. Duffner & I went to depot to see about train. I didn't get away from Buckhannon till 5 o'clock or later Monday evening; had no conversation Monday about the matters I had found Saturday night and Monday morning; had no conversation with any one about these deeds, not even with Duffner, until he had employed J. Wise Norton to investigate the title to this property in fall, 1883. That was the only —. Duffner received a letter from Norton requesting him to get reference from me to papers I knew anything about; must have been as late as November; had no conversation about the matter after leaving Buckhannon Monday evening. Philip
364 Thomas came along on train, saying — was going to see his daughter in Penna. and had business in Cleveland and was coming this way. Duffner and I didn't know his business. Duffner & Thomas rode together on construction car to Weston.

Q. Had you before Monday morning looked into any of the books containing the records of deeds or been told anything about these Morton, Howard, & Swan deeds?

No, sir.

Q. During Friday who was in clerk's office with you, if any one?

D. D. T. Farnsworth, H'y F. Westfall, Jackman Cooper.

Q. Who showed you the books to look into and handed you the books, if any one?

Mr. Westfall principally; perhaps Cooper, too. Cooper was not familiar with office of late. Westfall said he was, and had access to it whenever he wanted to go there.

Q. Who showed you what statutes to read?

Henry F. Westfall, I am very clear; think Farnsworth
365 handed me some books; not positive. He was there almost all the time taking part. Some one of them was there all the time up to Saturday afternoon. Farnsworth went out, I know; not gone any length of time. Henry F. Westfall was there, I think, all the time up to time deed was delivered. Cooper was there nearly all, if not all, the time. Farnsworth stepped out occasionally.

Q. When Dan'. D. T. Farnsworth on Saturday took the floor and made a speech what did he say?

Wouldn't undertake to say all he said. Said those tax titles had never been searched so thoroughly as I had done, & other words complimentary to me. Said they had examined that title and wouldn't deal in any property that wasn't right; were honorable men, etc.; complimented me pretty highly and then complimented the other side.

Q. During Thursday, Friday, and Saturday what statements did any of those men—Farnsworth, Cooper, or H. F. Westfall—make about the title?

I have already stated Westfall said that they knew Wilson
366 hadn't any title; can't recollect anything further than already stated; great deal of talk. This, I have repeated, had a good deal of *right within* material to my investigations.

Closed.

Cross-examination by JOHN BRANNON:

Q. You have spoken of a business transaction had here in your office between Duffner & Farnsworth in your presence when you were engaged in preparing a paper in relation to this land matter. Did you not at that time or as Farnsworth was leaving your office speak of the fact that Jos. Duffner had been talking about having you go with him to Buckhannon, in Upshur county, to examine the title to the land you have been speaking of, and did not said D. D. T. Farnsworth urge you to go & express to you advice on his part that you should go to make this examination?

I don't recollect any such conversation; don't think Duffner had said anything to me at that time about going down there.

Q. Did not said Farnsworth, in your office or at your home in Cleveland, invite you at the time stated to go to Buckhannon and examine into the title of said land?

367 Am very sure he did not.

Q. Do you remember of being present and examined as a

witness in a trial at law between these same parties in dist. court of United States at Wheeling?

Yes, sir.

Q. Did you not state when you were examined as a witness in said trial that upon the occasion of the said Farnsworth being here in your office at the time you have referred to the said Farnsworth had invited you to go to Buckhannon and make the examination of the title?

I don't recollect; that's two years ago. If I stated so then I was probably right at that time.

Q. You have stated in substance that you found this land had been charged on the tax books in Upshur county in the name of Wm. H. Morton, and was sold for the delinquent taxes for the years 1875 & 1876; state if you know whether this land was sold for the taxes of 1875 and 1876 or for the taxes of 1876 alone.

My recollections is that the assessor's list and also delin-
368 quent list and list of taxes sold named both years, and I be-
lieve it was sold in December, 1877, for the taxes of 1875 and 1876.

Q. Did you examine to see whether said 40,000-a. tract had been charged on the tax books to any other person for the year or years for which the same was sold in the name of Wm. H. Morton?

From the description of the land of this 40,000 a. in the books shown me it was described as on Buckhannon river, but I am quite positive that was not listed in 1876 in any other name than Wm. H. Morton.

Q. Did you not upon that occasion, after having so discovered that this land was charged for the year stated only to Wm. H. Morton, call for the statutes and examine them and remark that as it was only charged to Morton that it made no difference whether he had title or not, and wherever the title might be the purchaser would get it, and that laws of West Va. were like those of some other States in that respect?

No, sir.

Q. On your way from Buckhannon did you stop any time in — city of Wheeling?

Yes, sir.

369 Q. Did you make any examination or inquiry in the State auditor's office, then in Wheeling, in respect to these lands?

I did.

Q. State what.

I went in to examine the record in reference to this list of delinquent taxes to see what the State auditor had done in reference to it for 1876 on this property. Statute required list to be returned to State auditor when delinquencies could be paid, and if not paid at particular time the State auditor made out a warrant to the sheriff to proceed to sell the property. I wanted to see if proper entries or signatures had been made to return of sheriff of list. I made the examination in the office I went to make; made memorandum of what I found; I think our paper lacked proper signature—the one coming up from officers of Upshur Co. In my testimony-in-chief

this matter to which my attention was called was before my mind, and I intended to speak of it after I concluded stated my doings in Upshur Co., but didn't occur to me then till Judge Brannon just called my attention to it. I intended to state this in my account of what occurred on my way home, but overlooked it.

370 Q. Did you and Mr. Duffner start together from Buckhannon to Cleveland? &, if so, state when you reached Cleveland after leaving Buckhannon on Monday evening.

We got home Wednesday night; travelled together.

Q. State, if you know, on what bank Duffner's check was that he gave to Farnsworth after receiving the deed.

On Wick & Co.'s bank, Cleveland, Ohio.

Q. Did you at any time at the platform of the depot in Buckhannon, when there to leave on your return, have conversation with Watson, Westfall, and Wm. D. Farnsworth or either of them about what your conclusions were after having examined the title to the land in question?

No, sir.

Closed.

And further deponent saith not.

CHARLES L. FISH.

371 STATE OF OHIO, } *ss:*
Cuyahoga County, }

I, Norton F. Horr, a notary public in and for the county and State aforesaid, duly commissioned and qualified, do hereby certify that the above-named Matthew Duffner, Charles Schmieder, Augustus Baldwin, Wm. E. Ransom, Charles Duffner, Joseph Duffner, and C. L. Fish were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them respectively subscribed, as above set forth, were reduced to writing by me (except 8 pages by my clerk), both being proper persons and not interested in the action, in my presence and in the presence of the witnesses respectively, and were subscribed by said witnesses in my presence, and were taken at C. L. Fish's offices, Cleveland, O., at 10 a. m., January 27, 1887, by consent of all parties, notice being waived, and at continuance mutually agreed upon.

I do further certify that I am not a relative or attorney of either party or otherwise interested in the event of this action.

372 In witness whereof I have hereunto set my hand and seal of office this 29th day of January, A. D. 1887.

NORTON F. HORR,
Notary Public.

		Witness fees:	
Writing dep., at 20 cts. per 100 w'ds	$28 00	Jos. Duffner	$1 50
Swearing witnes-, 4 cts. each	28	Chas. Duffner	75
Clerk's certificate	35	Chas. Schmieder	85
Postage & material	30	Augustus Baldwin	3 25
		Wm. E. Ransom	75
		C. L. Fish	75
		Matthew Duffner	3 00
	$28 93		$10 85

Total costs of taking depositions $39 78

Received of Joseph Duffner the sum of $28.93 in full of my fees as above specified.

The witnesses were paid their fees by Joseph Duffner.

NORTON F. HORR,
Notary Public.

373 THE STATE OF OHIO, *Cuyahoga County,* } ss:

I, Henry W. Kitchen, clerk of the court of common pleas, a court of records, of Cuyahoga county aforesaid, do hereby certify that Norton T. Horr, before whom the annexed deposition was taken, was at the date thereof a notary public in and for said county, duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting, and believe his signature thereto is genuine.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at Cleveland, this 29th day of January, A. D. 1887.

HENRY W. KITCHEN, *Clerk.*

(Here follows diagram marked p. 374.)

374 The lines shaded red represent a survey of 40,000 acres made in the Co. of Randolph, Va., for Thomas Wilson 20th March, 1795. The lines shaded blue represent prior surveys
375 and grants covering said survey, as indicated on the plats.
February 18th, 1887.

JOHN R. BOGGESS.

Endorsed as follows: Thomas Wilson's 40,000-acre survey, covered with prior claims. Exhibit B B with deposition of John R. Boggess.

376 EXHIBIT "D D" WITH DEPOSITION OF J. R. BOGGESS.

CLARKSBURG, WEST VA., 11*th Dec.*, 1876.

For a number of years I have had information of a tract of land formerly in the county of Randolph, in the State of West Virginia,

the whole or part of which is supposed still to be in that county, on waters of the Buckhannon, Kanawha, and Elk rivers (which it is supposed may be located), granted by the Commonwealth of Virginia to Thomas Wilson, described as containing 40,000 acres, exclusive of prior claims. I think the whole or the greater part of the land within the bound-ry of that grant to Wilson is covered by a grant from the Commonwealth to Davenport and others of about 30,000 acres and a grant or grants to William Stewart for several tracts of 5,000 acres each which were older than the grant to Wilson, and that in the year 1840 or about that time, under the decrees for or orders of the circuit superior court of law and chancery for
377 the county of Lewis and the county of Braxton, these lands, treated as delinquent or omitted and forfeited, were, by the respective commissioners of delinquent and forfeited lands, sold to different purchasers, who, others claiming under them, I suppose (and have no doubt), now claim the lands, a number having actual possession of the parts.

As far as I am informed I know no fact which would occation the vesting of the title claimed under the grant to Davenport and others or Stewart in any person or persons under the grant to Wilson, and I do not beleive that any claim under the latter grant is valid.

JOHN S. HOFFMAN.

Endorsed as follows: Tom Wilson, 40,000 acres. Opinion given to Rothwell. Exhibit D D with J. R. Boggess' deposition.

378 Endorsed as follows: Depositions taken on behalf of plaintiff in case of Joseph Duffner against D. D. T. Farnsworth and others, pending in the district court of the United States for State of West Virginia. Rec'd by mail, under seal, Feb. 3rd, 1887, and opened in court by order of court this 2nd day of March, 1887. Test: Jasper Y. Moore, clerk D. C. U. S., D. W. Va.

379 *Defendants' Depositions. Filed by Leave of the Court March 2nd, 1887.*

The following depositions are taken to be read as evidence for and on behalf of the defendants and, by consent of parties, in the chancery cause of Joseph Duffner *vs.* D. D. T. Farnsworth and others, now pending in the district court of the United States for the district of West Virginia, taken at the town of Buckhannon, county of Upshur, West Virginia:

FEBRUARY 17TH, 1887.

Present: John Brannon, att'y for d'f'ts who have answered and H. C. Coon.

Present: M. T. Frame, att'y for p't'ff.

PHILLIP REGER, being introduced as a witness, being duly sworn, deposeth and sayeth as follows:

Ques. State your age and place of residence up to and prior to the year 1883 and since.

Ans. I am 48 years old; will be 49 13th day of June. I was born on territory now embraced in Upshur county and have always resided in Upshur county.

Ques. What is your occupation?

Ans. Farmer.

Ques. Are you the same Phillip Reger who was one of the grantors of the 40,000 acres of land in this county conveyed to Joseph Duffner and others, and are you the same Phillip Reger who is a party to this suit?

Ans. I am.

Ques. When did you first see or know Joseph Duffner and Mathew Duffner & Charles Duffner?

Ans. I do not remember of ever seeing any but Joseph Duffner. It was some time about the middle of July, 1883, when he was examining the records in the clerk's office with Mr. Fish.

380 Ques. Had you, prior to that time, any communication, correspondence, or negotiation with the said Joseph Duffner, the said Chas. Duffner & Mathew Duffner touching or relating to the sale of the said tract of land to them or either of them? If so, state what it was.

Ans. I had not.

Ques. You have spoken of seeing the said Joseph Duffner and Mr. Fish in the clerk's office examining the records: state, if you can, if you were present at any time in the clerk's office when the said examination was being made; and, if so, how often and how long, as near as you can state.

Ans. The time that I was in there I happened to come to town, and they said they were examining the records to the title of the 40,000 acres of land. I come on over and I suppose I was in there from a half to three-quarters of an hour. They were examining books; I did not go to see what, but I suppose they were the land books. I was not in there a great while until Mr. Fish, who I suppose was his attorney, he turned around to Mr. Joseph Duffner and said, "So far as I can see, the title is all right, take the land."

Ques. Were any other persons present when you were there and at the time when Mr. Fish made the remarks to Mr. Joseph Duffner referred to by you? And, if so, state who they were, as near as you can.

Ans. Mr. D. D. T. Farnsworth, H. F. Westfall, and, I think, Mr. Valentine Strader were in there. It seems to me Mr. Crislip was in there, and others were out and in at the time.

Ques. Were any remarks made by said Westfall, Farnsworth, Strader, or others in the presence of the said Joseph Duffner and Fish at the time or before or after the remarks you have re-

381 ferred to were made by the said Fish to the said Duffner? And, if so, state what they were and by whom made and when.

Ans. After Mr. Fish made that remark to Mr. Duffner about the title to the land being all right, Henry F. Westfall remarked: "Gentlemen, examine till you are perfectly satisfied, for we want no after-clap, for some people say that these tax deeds or lands

sold for taxes—some people call wild-cat titles." Others were talking, but I turned around and was talking with Mr. Westfall, and paid no attention.

Ques. Do you know whether after these remarks were made by the said Fish to the said Westfall that the deed to the Duffners was delivered or not?

Ans. It was.

Ques. Do you know whether the deed referred to was read and examined by any person at the time referred to? And, if so, state by whom and all you may remember about it.

Ans. It was handed to Mr. Fish, and I presume he examined the deed; he was looking at it, and in a few minutes Mr. Duffner started out of the room, the clerk's office. He got about half way to the front door of the court-house; Fish called to him; he stepped back to the clerk's office door, and Fish says, How is this? I thought you was to give $20,000 for the land, and the deed only calls for $15,000. How is this? And he, Duffner, made a motion with his hand and says, "That is all right; we understand this." He turned then and walked on out.

Ques. State when the last conversation you have referred to, between Fish and Joseph Duffner, about the deed occurred;
382 whether it was before or after the remarks of Fish to him, "that he could take the land," and state when it was.

Ans. It was just after the remark was made by Mr. Fish, "that he could take the land; it was all right." All occurred inside of the clerk's office, inside of a half or three-quarters of an hour. I was never in the company of Fish or Duffner before or after that, except that I saw Mr. Duffner in Wheeling afterwards.

Ques. by M. T. FRAME, att'y for p't'ff:

Ques. If you had no correspondence with Duffner about the sale of this land how did it come that you sold to him?

Ans. The company had agreed upon a few men who should sell the land.

Ques. Name them.

Ans. Mr. H. F. Westfall and Mr. D. D. T. Farnsworth.

Ques. Was Mr. Thomas associated with them for the same purpose?

Ans. I don't know nothing about that; I knew nothing about Mr. Thomas until the time they made the deed, in July, 1883.

Ques. D. D. T. Farnsworth and H. F. Westfall, then, were the only authorized agents of the company that you know of?

Ans. That was all that I knew. I was not present at all the meetings of the company.

Ques. You state that you do not know what it was that they looked at in the clerk's office, but supposed it was the records pertaining to the title of this land. Was that because you did not look at the books yourself?

Ans. I saw they were deed books, but I did not look in
383 the books or examine them myself.

Redirect:

Ques. by John Brannon, att'y for d'f'ts. You stated that D. D. T. Farnsworth and H. F. Westfall were all the agents you knew of. State whether they were agents authorized to sell the land, or that they, being here in the town of Buckhannon, were only selected to receive propositions from any one or more who might desire to purchase the land.

Ans. Since I have studied over it, there was what you might call a committee instead of agents, and Jackman Cooper was one of them who were to receive bids for the land, but were not to sell unless the company all agreed to it; that is the way I understood it.

Ques. You stated in this deposition that John Crislip was present when Mr. Fish was here with Mr. Duffner examining the records in the clerk's office. Are you certain that he was present, or what have you to say now about it?

Ans. Since I have studied over the matter, I do not have any recollection of Mr. Crislip being in there.

Recross:

Ques. by M. T. Frame, att'y for pl'ff. Has your recollection been refreshed by a conversation with Mr. Crislip since your statement in your last answer referred to?

Ans. I don't know as it is, directly. We were talking, and I told him I did not recollect certain about his being there and asked him if he was.

Ques. Was your recollection also refreshed by a conversa-
384 tion with either Mr. Valentine Strader or D. D. T. Farnsworth about the fact of the company having selected D. D. T. Farnsworth and Henry F. Westfall as agents for the sale of the land in question?

Ans. Mr. Strader told me about Mr. Cooper being one of the committee and asked me if I recollected that.

Ques. Was it suggested to you by either of them, Farnsworth or Strader, that the company had no agents, but that they were allowed to receive bids for the land?

Ans. No; if they did I did not understand them that way.

Ques. Were you examined in the lawsuit at Wheeling between these same parties and about this land?

Ans. I was.

PHILLIP REGER.

JASPER N. WESTFALL, being next introduced by the defendant, being duly sworn, deposeth and sayeth as follows:

By JNO. BRANNON:

Ques. State your age, residence, now and heretofore, and occupation.

Ans. I will be 47 years old in May; my residence is Upshur county; was born and raised in what is now the territory of Upshur county; occupation, farming.

Ques. Have you ever filled any public office in the county of Upshur? If so, state what it was and the period of your incumbency.

Ans. I have. I was assessor of the first district of this county for eight years, beginning, I think, in 1877. I went out of office the first of January, 1885.

Ques. What has the office of assessor to do with the matter of land taxes?

(Question objected to as improper.)

Ans. The assessor the first four years of my term extended
385 the taxes on the land books. He made out the entire books. The last four years the assessor had to make all divisions of assessments and entries of land and certify that the land books were correct.

Ques. Do you know the plaintiff, Joseph Duffner? If so, state when and where you first became acquainted with him.

Ans. I have met Mr. Duffner in the town of Buckhannon. I reckon it must have been in the year 1883. My first introduction to him was about the time he was looking after this land that he purchased of this company. I think in the year 1883.

Ques. Have you ever seen a man named Mr. Fish, of Cleveland?

Ans. I have seen a man here in the clerk's office who I understood was Mr. Fish, of Cleveland.

Ques. State whether it was at the time you saw the said Fish that you first met the said Duffner?

Ans. It was not the first time I had seen Mr. Duffner.

Ques. State if you saw the said Fish and said Duffner in the town of Buckhannon together; and, if so, state if you know what they were engaged at.

Ans. I saw Mr. Fish and Mr. Duffner in the clerk's office of the county court of Upshur county. They were engaged, or at least Mr. Fish was, Mr. Duffner being in the office, but not engaged. Mr. Fish was engaged in examining the records of the Morton land, as I always called it, of 40,000 acres.

Ques. Were you about the said clerk's office during the
386 said examination? And, if so, state about how long you were probably there?

Ans. I was in the clerk's office some two hours while Mr. Fish was examining the records.

Ques. State, if you remember, what kind of an examination as to records, books, or other matters in the clerk's office was made by the said Fish and what remarks he made, if any, in respect to the examination—what he called for, if anything; and if you had any conversation with the said Joseph Duffner in respect to this land in question state it.

Question objected to as leading.

Ans. My understanding, from what I could gather from the conversation of Mr. Fish and Farnsworth and others—there were present in the clerk's office of the county court of Upshur county at this time Mr. H. F. Westfall, Valentine Strader, Major Dan'l Farnsworth,

Watson Westfall, Mr. Fish, and Mr. Joseph Duffner and others that were out and in. My understanding, from what I could gather from the conversation of Mr. Fish and Farnsworth and others, was they were examining the title to the 40,000-acre tract of land known as the Morton land. I heard them reading a deed that purported to be of the 40,000 acres, which had been sold for non-payment of taxes and bought by Geo. Hennings and Company. They also examined the delinquent book relative to the returns of delinquent lands. They were examining two or three deeds, one, which was a tax deed, and one that was made by Peter Dumas or some such name, acknowledged before a man by the name of Bull—I forget the given name—who was a notary public or justice. I forget which they decided he was. Then there appeared to be—I would call it—rather a confusion among the parties
387 from the fact that this deed purported to only be a copy of the original deed. Then there was law examined by Mr. Fish and others to ascertain as to the validity of said deed, and were decided by Mr. Fish and Major Farnsworth and, if I mistake not, by H. F. Westfall that it was good. Then Mr. Fish remarked that the laws of West Virginia were nearly like those of Ohio. On that point I had a conversation with Mr. Duffner the same day on the platform of the court-house. Mr. Duffner and myself, while this examination was being made, walked out to the east end of the platform and sat down. There Mr. Duffner asked me if I knew anything of this land. He also asked me about the timber, about the outlet for that timber down the river. He also asked me about the identity of this survey. I told Mr. Duffner as to the timber there were plenty of good timber and I thought — could be got out down the river. I also told Mr. Duffner that I thought there would be no trouble in identifying the survey, but as to the title I thought it best to look well to that. This is the sum and substance of my conversation with Mr. Duffner on this subject.

Ques. If Mr. Duffner made any reply to your statement to him that as to title he should look well state what it was.

Ans. Mr. Duffner did reply and remarked that he had an attorney here for that purpose, and would not buy or close up until they were satisfied that the title was good or safe. I cannot say just what the language was.

Ques. Were the assessor's land books, after the question was
388 raised as to the deed you refer to being only a copy, called for by any of the parties you have named; and, if so, by whom?

Ans. The assessor's land books were called for by Mr. Fish. The books were furnished him and examined by him.

Ques. After Mr. Fish examined the land books at the time you stated state what he said, if anything.

Ans. My recollection is now that he could not find it on the books in any other name (I would not be positive about the language he used) than Morton. My understanding is that he was looking to see if the land was on the assessor's books in any other name the year it was sold for taxes. Mr. Fish did not say that was his purpose, but I inferred from his conversation that was his object.

The whole of the foregoing answer is objected to on the ground of its being but the inference of the witness.

Ques. State, if you can, the day of the week when the matter of the deed referred to being a copy was discovered.

Ans. I cannot do it.

Ques. State, if you remember, whether it was in the morning or the evening of the day.

Ans. It was in the afternoon.

Ques. State whether the parties you have named as being present were present when the said paper was discovered to be only a copy or who was present.

Ans. Mr. Fish, Mr. Daniel Farnsworth, Henry F. Westfall. I think Valentine Strader was there; won't be positive, but I think he was. Mr. Watson Westfall, I think, was in the office. Jackman Cooper was there. I am not positive whether Mr. Duffner
389 was there or not. He might have been standing at the window on the platform. The window was raised, it being very warm.

Cross-examination by M. T. FRAME, att'y for pl'ff:

Ques. What relation, if any, are you to the defendants in this case?

Ans. I don't know that I am related to any of them. There was Henry Westfall—I really don't know what relation we were, but there was some relationship; he was not my uncle, though everybody always called him uncle.

Ques. Did it ever occur to you that you knew any fact of importance in this cause until after we had recovered a verdict for $17,000 against the defendants?

Ans. I knew all the time what I have stated.

Ques. Did you ever speak of it to anybody until after the verdict?

Ans. Yes; I talked with parties about it.

Ques. Either of the defendants?

Ans. I talked with one of the defendants, but I do — know whether it was before or after the verdict. My impression is that it was while the trial was going on. I am not positive but what I talked with two of them. I am positive that I talked with Mr. Crislip, and am of the impression that it was during the trial at Wheeling. My conversation was here in Buckhannon. My recollection now is that I had a conversation with Cyrus Hinkle; we were going home from Buckhannon. I could not say positive as to the time, but am of the impression that it was at the time of the trial. I may have talked to other members of the company, but as to what I knew never told anybody before I told Crislip, to the best of my recollection.
390 Ques. You are the same Jasper N. Westfall who made an affidavit at the instance of the defendants, to be used on the motion for a new trial in the case at Wheeling, in which Duffner had recovered a verdict, are you not?

Ans. I am.

Ques. Was not this same land charged with taxes in the name of Wilson for the same years that it was sold for non-payment of taxes in the name of Morton?

Ans. I can't tell as to that. I do not recollect. I never examined.

Ques. You state in your examination that law was examined by Fish, and that he and Farnsworth concurred in the opinion that the title was good in relation to the copy of deeds on record. Please state whether the law referred to was statutory, common law, or decisions of courts.

Ans. My recollection is now they examined the statutes and acts of the Legislature.

Ques. Did Henry F. Westfall concur in the opinion of Farnsworth and Fish?

Ans. I do not recollect positive as to that.

And further deponent sayeth not.

J. N. WESTFALL.

CHARLES FISCHER, being then introduced and being duly sworn deposeth and sayeth as follows:

Ques. State your age, place of residence, and where you resided in 1883, and what is your occupation.

Ans. My age is 37; will be 38 next month. I live now near Helvetia. I lived — 1883 in Buckhannon, Upshur county. I am now a farmer; by trade am a wagon-maker.

Ques. What is your nativity?

391 Ans. I am a German.

Ques. How long have you been in the country, and do you speak the German language?

Ans. I landed in New York the 7th day of December, 1874. I speak the German language.

Ques. Are you acquainted with Joseph Duffner, Mathew Duffner, and Charles Duffner or either of them?

Ans. I saw Mr. Duffner and his brother and son some time in the spring of 1883. I mean Mr. Joseph Duffner.

Ques. State, if you can, when you first saw Mr. Joseph Duffner and where.

Ans. I first saw him in the Valley House in Buckhannon. It was at night, between 8 and 9 o'clock. It was in the spring of 1883—some time in April—I reckon.

Ques. State, if you know, of the said Duffner going to look at land at that time, and whether you saw him before he went to look at the land or after he returned from looking at the land.

Ans. I saw him after he had been to look at the land.

Ques. State, if you know, whether when you saw him at night it was the night of the day after his return from looking at the land.

Ans. It was the night of the day they returned.

Ques. State whether you had any conversation with Joseph Duffner in respect to the land they had been to see or about titles; and, if so, state anything that he or you may have said in respect to same.

Ans. I had conversation with Mr. Duffner and also with his son

and his brother. I was uptown at Wickey's shop, and he
392 told me there were some people from Cleveland here that he was acquainted with. Wickey said to wait awhile and he would go home with me, and as we passed by the Valley House we would go in and see them. When we got there I saw Mr. Duffner, his brother, and his son. Frank Wickey made me acquainted with them. Wickey told me before that they wanted to buy some land here. They were talking about the land. I can't recollect all that was said. I told them that I had no confidence in the title; that I had heard it was tax title, and told him that he must keep his eyes open or his pocket book if he wanted to buy land in this country. I remember his son said that they had seen some fine land with fine timber on it, and had travelled a whole day without seeing a house. I told him I could lead him around those hills for a whole month without seeing a house. Mr. Joseph Duffner did not say much. I could not tell all he did say; have forgotten it.

Ques. The time you refer to did Mr. Wickey say anything to the Duffners about tax titles or the defects in titles in this country? If so, state what he said.

Ans. I can't recollect what Wickey said, but he warned him as I did about titles.

Ques. Does the said Wickey line in this county? If not, where does he live?

Ans. He was living in the town of Buckhannon at that time. He left here about 3 years ago, and I don't know where he is.

Ques. Was your conversation with the Duffners in the German language?

Ans. It was in the German language mostly.

Ques. Do you know whether the Duffners to whom you have referred understood the German language?

393 Ans. I know they understood the German language.

Ques. Do you know what country the said Wickey is a native?

Ans. He is a Bohemian; at least he told me so. He understood the German language.

Ques. Did you see Mr. Joseph Duffner here at any time after that? And, if so, state whether there was any one with him and whom, and when, as near as you can.

Ans. I saw him afterwards here in Buckhannon, and one time he came down to the shop to see me; afterwards he told me he was going to work some time in the fall or winter taking logs out, and might need a few log carts. I saw him with another gentleman on the street at another time, and heard the people say it was his lawyer he had brought from Cleveland with him.

Ques. If you had any conversation with Joseph Duffner about the land or the title state what it was.

Ans. I had a conversation with Mr. Duffner, but not concerning the land.

Cross-examination:

Ques. By M. T. Frame, att'y for pl'ff. In April, 1883, at the time

you had the conversation with Duffner, what knowledge, if any, had you touching the vices of Henning & Co.'s title to this 40,000-acre tract of land afterwards sold to Duffner?

Ans. I heard the people talk about this land. I knew very well there was no 40,000 acres land, because I am well acquainted in the country, and it is all settled, or the biggest part of it anyhow, as far as I am acquainted in the country.

394 Ques. When did you move to Buckhannon?

Ans. In February, 1880.

Ques. Who had ever shown you the land?

Ans. Nobody had shown me the land, but I had been told that this land we had been speaking of begins up the river about 10 miles, and takes in all the Helvetia country and Florence.

Ques. Have you learned that since 1883?

Ans. No, sir; I heard this before.

Ques. What title was it called?

Ans. I heard it was a tax title. I don't know anything about it; don't understand the law about such things, but have been told that a tax title is not good.

Ques. Now, that was all you told Duffner, was it, what you had heard in relation to tax titles generally?

Ans. I told him I had no confidence in tax titles; might have told something else, but don't recollect.

Ques. You made an affidavit, at the instance of the defendants, to be used on the motion for a new trial in the case in which Duffner had gained judgment against these parties, did you not?

Ans. I did make a statement.

Ques. Is your recollection of the facts and circumstances as clear now as when you made that affidavit?

Ans. I expect it is.

Ques. Did you tell Duffner, in the conversation at the Valley House, that D. D. T. Farnsworth was a gentleman who could be confided in?

Ans. I don't recollect; might have said something about it; am not sure of it.

Ques. Was Charles Schnieder present at the conversation

395 you have referred to at the Valley House?

Ans. No, sir; he was not; I did not see him.

Ques. When did you tell Mr. Farnsworth about having this conversation with Duffner with reference to the trial he had at Wheeling?

Ans. I told Mr. Farnsworth about the time I made the affidavit, the date of which will show.

Ques. I understand you, then, that in your conversation with Duffner, which you have referred to, you didn't tell him of the existence of any fact relating to this title, but only expressed in a general way that you had no confidence in tax titles.

Ans. That is what I said; as far as I knowed I had no confidence in them.

Ques. Now, you have been over this conversation twice when it was written down, and you have talked to Farnsworth frequently

about it, have you not? Can you now think of anything else you may have said to Duffner on that occasion about this title, more than you have already stated?

Ans. I can't think of anything else; I talked with Mr. Farnsworth on the same day I made the affidavit; never before. We have talked afterwards.

Redirect:

Ques. by John Brannon, att'y for d'f'ts. State whether you have ever been on the land in question.

Ans. I have seen a plot of the land, and am well acquainted in the country, know every stream of water in it, and have been living there before I came to Buckhannon, over three years.

396 Ques. In the conversation you had with Duffner, in April, 1883, did you inform him you was acquainted with the land?

Ans. I don't — if I did or not; can't recollect it.

Further deponent sayeth not.

CHARLES FISCHER.

* * * * * * *

FEBRUARY 18TH, 1887.

Present: John Brannon, attorney for defendants who have answered and H. C. Coon.

Present: M. T. Frame, att'y for plaintiff.

VALENTINE STRADER, being introduced by the defendants and being duly sworn, deposeth and sayeth as follows:

Ques. State your age, residence in 1883 and prior and since, and your occupation.

Ans. If I live to see the latter part of next July I will be 69 years old; I have lived within the bounds of this county all my lifetime, within 3 miles of Buckhannon; occupation, farming.

Ques. Are you the same Valentine Strader who is a defendant in this suit?

Ans. I am.

Ques. Are you acquainted with Joseph Duffner, plaintiff? If so, state when you first made his acquaintance and where.

Ans. I am acquainted with him, and got acquainted with him on the morning they were preparing to go and look at this 40,000-acre tract of land in the town of Buckhannon, at the Valley House.

Ques. State if you know who went with the said Joseph Duffner and whether you or any of the owners of the land went with him to see the land.

Ans. I think Mr. Watson Westfall went with him, but none
397 of the owners of said land; I understood one or two of his sons or sons-in-law went with him; I think there was some three or four, or perhaps more, in the company.

Ques. Did you see at that time a brother of Joseph Duffner? And state if he went with him.

Ans. I can't state that, because I was not introduced to the others and did not learn their names.

Ques. State when after that you saw the said Jos. Duffner—where, and any circumstances connected with seeing him here that you know of.

Ans. Soon after his return, after looking at the land, I saw him here in Buckhannon.

Ques. When next after that you met with the said Joseph Duffner—where, and state any circumstances in relation to this transaction you may know of when so seeing him.

Ans. I think I saw him off — on during that whole day in company with some other gentleman here.

Ques. When next after that you met with the said Joseph Duffner—where, and state any circumstances in relation to this transaction you may know of when so seeing him.

Ans. I saw him in company with Major Farnsworth, Henry F. Westfall, and Jackman Cooper, trying to negotiate a trade for this said 40,000-acre tract. My understanding was the Duffners came here at the instance of a Mr. Woods, who expected to sell the land to the said Duffners, but got drunk and was incompetent to do the business, and therefore they made application to the above-named parties to purchase the land. I don't think I heard a great
398 deal of their conversation at that time. They went into the Barlow House or Major Farnsworth's store-house, upstairs, and was some time there trying to effect a trade; but, I think, the trade did not go off at that time; some time after that; a short time; cannot be positive if it was the same day or not. Major Farnsworth did then report to me that they could get $15,000 for said 40,000-acre tract. I was dissatisfied, on my part, that it was not enough for said land, from my knowledge of it, and did not want to take that price. We consulted about the matter, but the owners of this tract being scattered over the country, and considerable difficulty to get them here when a purchaser came here wanting to buy land, I finally consented to let my interest go with the rest for the $15,000 cash down.

Ques. When did you next after that meet with the said Joseph Duffner—where? And state any circumstances in relation to this transaction you may know of when so seeing him.

Ans. At the time this offer was made it was upon conditions. If the title suited him when examined he would take the land. After that he brought with him an attorney by the name of Fish, from Cleveland, Ohio, I understood from Mr. Duffner. Then they went into an examination of the title, in the county clerk's office, in Buckhannon.

Ques. Was you present at any time in the said clerk's office during the time the examination was made; and, if so, how often, and the time, as near as you can state, you may have been there?

Ans. I was there most of the time of three days, commencing on Thursday and ending on Saturday. This was in July, 1883.

399 Ques. Now state what you may know of the examination,

results, and conclusion of parties touching the matter of said examination, and all you may know about it.

Ans. Well, the title that we sold was a tax title in the name of Mr. Morton. They then commenced examining the descendant of the title, examining the deed books, and upon them they found (Mr. Fish was doing the examining)—in looking through the deed books they found that this Morton title had been patented by the Governor of Virginia to Thomas Wilson. They continued their examination on through the deed books in the clerk's office—that it went from Wilson down to (this patent to Wilson was dated December 30th, 1795), and from Wilson to James Swan, and from Swan to George W. Howard, and then to William H. Morton, in whose name it was returned in the year 1876 for non-payment of taxes, in whose name it was sold for taxes and we became the purchasers in the year, I think, 1877; that was about all the examination they made, excepting at one time they called for the assessor's books to see if it was on the assessor's book in the name of Morton when it was sold to us for taxes. They also called—Mr. Fish called—for some law books, which were furnished him, and after his examination he said that it was all right, that the laws of West Virginia and State of Ohio were nearly alike in regard to tax titles. He still continued examining till Saturday at times in said office, when he come to the conclusion and said the title that we claimed was all right, and then stopped. Mr. Henry F. Westfall remarked to Mr. Fish and Mr. Duffner that if they were not satisfied with said title to take further time and fully satisfy themselves as to the title, for some people said that a tax title was a wild-cat title. Mr. Farnsworth remarked immediately—I mean D. D. T. Farnsworth—to fully examine said title; that we did not wish to sell the land to them unless they were perfectly satisfied with the title. I myself also remarked that we wanted them to be satisfied with said title. Then I stepped out to the store to get some tobacco and returned immediately. I was just stepping in to the clerk's office when this examination was going on; met Mr. Duffner in the door of the clerk's office; I asked him how they were getting along with the examination. He remarked to me that they were through; that Mr. Fish said it was not necessary to examine any further the title. I asked him, Mr. Duffner, if he found in the examination the title of said tract of land as good as represented by said parties, the owners of this land. He said to me "they found it better than represented, and was perfectly satisfied with said title," and was now going to hand over the check for the residue of the money and accept the deed; I think that was all the conversation we had.

Ques. Do you know whether the said Fish read the deed of yourself and others to the Duffners or whether he made any remarks in respect to it to Duffner? And, if so, state what you may know about it.

Ans. No, sir; I did not hear him read it nor make any remarks to him. I learned from Mr. Duffner that the deed had been read in my absence and was all right according to contract.

Cross-examination:

Ques. by M. T. Frame, att'y for p't'ff. Did you see Phillip Thomas during any of the negotiations for the sale of this land aid-
401 ing in the matter? If so, state when you saw him and how he came to be engaged.

Ans. I don't know much about that; only what he said. I saw him during the negotiation of the sale with the parties. He told me that he was acting for Mr. George Henning & Son, who had 19 shares in the 40 shares, and that he was to have a commission if he effected a sale for so doing.

Ques. by same. Did the company pay Farnsworth and Cooper a commission for the sale?

Ans. No, sir; I think not; at least I did not, and I think the rest were the same way.

Ques. State the interest you had and why it was, being interested, you did not go upstairs with Farnsworth, Cooper, and Thomas when they were negotiating the sale with Duffner.

Ans. I had a half share, 500 acres. After the purchase of this land by said company we had some one or two meetings and called together as many as we could, and at said meeting, the parties being scattered, and Mr. Hennings was here at the time of the meetings, it was decided by said meetings that as Major Farnsworth and Jackman Cooper lived here in the town of Buckhannon, and being more likely to see any person that would come to our town to purchase land, would be more apt to see them than the rest of the company, who were scattered in different parts of the country, we chose Mr. Farnsworth, Mr. Jackman Cooper, and also Mr. Henning, living in Pennsylvania. Either of the parties happening to see a land purchaser, they were to see what they could do with them in the sale of this 40,000 tract and notify the rest of the company if any-
402 thing could be done in the sale of the land. The reason why I did not go upstairs I consulted with those parties in reference to the sale of the land, who kept me always posted how it was going in the sale of the land. My talk in the sale was through the parties we had chosen.

Ques. What was the minimum to be accepted for the land agreed upon at your meeting when you chose Farnsworth and Cooper to represent you in the sale of the same?

Ans. We wanted $20,000 all the time, and believed it was worth more, and I to-day believe it is worth more.

Ques. Did you represent, through your chosen agents or in person, to Mr. Duffner that the title to the land was perfect and a good title?

Ans. We did not present anything but the tax title we had bought and proposed to sell no other.

Ques. Did you, through your chosen agents or in person, tell Duffner that it was a good tax title?

Ans. I believe it was told Mr. Duffner, but he was to examine the records for himself.

Ques. Then you admit that prior to the sale that title was represented to Duffner as a good title, do you?

Ans. Do not know what others did. I have above stated what I did. I believe the tax title of this is good. I was aware there were settlers on it that could hold small portions of said land by possession, and also told Mr. Duffner so. We made a deduction of one-half, or 20,000 acres, on the sale of it on account of laps or other contingencies.

Ques. Didn't you tell Mr. Duffner that he would hold more than half the entire tract, but that you wanted to make that deduction in order to be certain?

403 Ans. I think he was to have all over 20,000 acres that he could hold by the title. The deed shows what we claimed and agreed upon in the sale of the land.

Answer objected to and the question repeated.

Ques. Well, sir, I did not. I had never had it surveyed, and did not know the amount of land accurately in said survey that was claimed under possession.

Ques. In your answer filed in this cause did you not deny that any one of the owners represented to Duffner that the title to the land was good?

Ans. I do not now recollect how that was.

Ques. Was that answer sworn to by you after you heard it read over?

Ans. I think it was; I won't be certain.

Ques. Did you not also in that answer deny the existence of a committee being selected by the company—a committee being composed of D. D. T. Farnsworth and Jackman Cooper—and speak of the allegations of the bill in that particular as the alleged committee?

Ans. Do not recollect that that question was asked me. In the answer I did not regard them as a select committee particularly, but only as they were convenient here in the town to see any person that might want to buy land, that might come to the town for that purpose.

Ques. You say in your examination-in-chief that when you returned from across the street you met Duffner at the door of the clerk's office, and "I asked him, Duffner, if he found in the examination the title of the tract of land as good as represented by the parties, the owners of the land." What representations as to

404 the goodness of the title did you refer to?

Ans. We had stated to him that we had purchased a tax title under the sale of delinquent land for taxes which we thought was good, and he said he found it as represented and better; perhaps he used the word "stronger."

Ques. Then it is true that within your knowledge this title was represented to Duffner by the owners as a good title, and, knowing that fact, you asked him if it was as good as represented, did you not?

Ans. It was not represented to be anything further than what we claimed a tax title held.

Ques. Haven't you admitted that you and others—perhaps certainly—you told Duffner that it was a good tax title?

Ans. I don't know but what I have told him so, but don't know what any others told him.

Ques. You say you saw Fish examining deed books. Please state how many of the deed books he looked at.

Ans. I cannot tell how many.

Ques. More than two?

Ans. I could not say positively. I can say that all he called for were furnished him.

Ques. Did he look at more than one deed book, within your own personal knowledge?

Ans. I could not say whether one, two, or three.

Ques. Why in your direct examination do you use plural "books" since you don't know?

Ans. Well, I think he did examine books, but I may have misspoken in using the word books. The records of those titles may have been in more than one book. If so, all that he inquired for were furnished him.

405 Ques. Now, don't you know that the deeds from Wilson down to Morton were all recorded in one book in succession, one after another?

Ans. I do not.

Ques. Did you ever talk to your company of the fact that some of the deeds on record in the chain of title from Wilson to Morton were but copies?

Ans. There was one I myself saw that was reported to be a copy of a deed acknowledged before a notary public by the name of Bull, I think, in the city of New York, and the commissioner's books were called for—I mean the assessor's books—at that time by Mr. Fish. I had no conversation with the company about the title until the time the examination was being made by Mr. Fish, and I think it was on Saturday, during the said examination, that I first heard about the reported copy and saw it myself.

Redirect:

Ques. by JOHN BRANNON, att'y for def'ts:

Ques. You say in your last answer that at the time it was discovered what purported to be a deed was ascertained to be only a copy on the record, and you further say at that time Mr. Fish called for the assessor's books. State whether he got the assessor's books called for by him and whether he examined the same. State what Mr. Fish may have said with respect to the matter.

Ans. When he discovered the copy he wanted to know how that was and then called for the assessor's books. They were furnished him, and he examined them, and after some time examining them he said it was all right, and then went on further to examine the title

down further till he came to the Morton title, and he also ex-
406 amined the sale and return of this land by the sheriff and said that it was all right.

Ques. You stated in answer to a question on the cross-examination that you stated to Mr. Duffner "that your title was good." State whether this was at the time you have said in former answers that Mr. Duffner was to have the title examined.

Ans. I considered it a good tax title; not as good, perhaps, as a general warranty title on old farm sales. I told Mr. Duffner "that the title was good" before the examination and at that time also. At the time I said this to Mr. Duffner he replied to me that he would not buy without thoroughly examining the title, till he was satisfied.

Ques. State whether in your conversation with the said Duffner referred to by you, in which you spoke of the title being good, or believing it to be good, whether you expressed to him anything other than your opinion as to the title.

Objected to on the grounds that he can only give the language, from which the court can ascertain his opinion.

Ans. Not anything further than my opinion.

Ques. You have spoken of a man named Woods coming to Buckhannon with the Duffners to see about this land in April, 1883. Did you know anything of the said Woods or give him the authority to act or negotiate about this matter prior to that time?

Ans. He was an entire stranger to me at that time, but was introduced to me while here. I had no direct conversation with him with reference to the sale of this land in any manner, but I understood from other persons that he wished to buy wild lands.
407 I don't recollect of giving him any authority to sell the land.

Recross:

Ques. by M. T. Frame, att'y for p't'ff. When did you first learn that the Duffners and Woods were expecting to be in town? How long before they come?

Ans. I could not say that I knew anything about it till I saw them here.

Ques. Were you ever examined as a witness in relation to a litigation about this land before?

Ans. No, sir; I was summoned to Wheeling at the time of trial there, but was not able to go.

And further deponent saith not.

VALENTINE STRADER.

* * * * * * *

WILLIAM D. FARNSWORTH, being introduced by the defendants, being duly sworn, deposeth and sayeth as follows:

Ques. What is your age? Where was your residence in 1883, before and since, and what is your occupation?

Ans. My age is 60 the 3rd day of May. I was born in what was

called Lewis county, now in Upshur county, and have lived in Upshur county, within a mile of Buckhannon, for 25 years. My occupation is farming.

Ques. Are you one of the defendants in this suit?

Ans. I am.

Ques. Are you acquainted with Joseph Duffner, the plaintiff; if so, when and where did you first make his acquaintance?

Ans. I am. The first time I saw him was in the clerk's office of the county court. I had no acquaintance with him at that time, but afterwards learned who he was in the clerk's office. I afterwards saw him at the depot and spoke to him for the first time.

408 Ques. If any persons were with him in the clerk's office at the time you refer to state who.

Ans. A man named Mr. Fish, whose name I learned afterward; also Henry F. Westfall, D. D. T. Farnsworth, Jackman Cooper, and I think Valentine Strader; am pretty certain he was there, and I think W. G. L. Totten and Phillip Reger.

Ques. State, if you know, what Messrs. Fish, Duffner, Farnsworth, Westfall, and Cooper were engaged in, if anything, in the clerk's office at the time you speak of.

Ans. Mr. Fish had a big book looking in it—one of the books belonging to the clerk's office. Henry F. Westfall, Cooper, and Farnsworth and Mr. Fish seemed to be very much interested looking over the books—I suppose for some land purposes; I did not know at the time. I saw Mr. Duffner standing behind Mr. Cooper, if I recollect right. I walked out a little while; don't know whether I left the platform or not. Anyhow, I met some one; runs in my mind it was Jasper Westfall. I asked him if he knew those gentlemen in the clerk's office. I told him I thought they were looking up the title to some land from the appearance of the books. He said they were the men who had come to look after the title of the Morton survey. It then first struck me that it was some New Yorkers, as there had been a man by the name of Johns here looking after the Morton survey. I then after little, pretty soon, went back in the office to see what they were doing, and it seemed that they had closed a book and pushed it to one side, and Henry Westfall remarked, "I want you to search till you are fully satisfied." I think a remark that Fish made, "I want to look at the deed." He took the deed and read to where he come to $15,000. He remarked then, See here; how is this? Duffner, you always told me this land cost

409 $20,000, and the — says $15,000. Duffner said to him, That is all right. Then Fish remarked, "He always told $20,000," and went on reading the deed. I staid in there till he got through with the deed. Then the question arose. I think Fish asked whether some of the parties owning the land had not bought others out. Fish asked the question whether they had made deeds to these parties, and I think Henry F. Westfall answered they had. He then said he would like to see the records of these deeds to see how they would correspond, and see if they were all right, and Henry F. Westfield told him that he could see them; they were here

in the office. There was some books laying on a table, and Henry F. Westfall went to look for book. I then left and did not see them, Duffner & Fish, until I saw them at the depot.

Ques. State, if you can, what time it was you saw them at the depot. State, if you know, why they were at the depot.

Ans. It was just after the train had gone out on Saturday, the same day they were in the clerk's office. They did not get on the train. I came up to the depot and saw Mr. Fish on the east end of the platform, and saw it was the same gentleman I had seen in the clerk's office. I then remarked to him, after having nodded to him, and said, "You are the gentleman that bought the 40,000-acre tract of land." He replied, "I am not." I then remarked, "I think you are the gentleman I saw in the clerk's office examining the land books." He said he was, but that a gentleman by the name of Duffner had bought the tract. He only came as attorney for Mr. Duffner to examine the title, and *he* then asked, "How
410 did you find everything?" He said much better than he expected. He said that he had come at a big expense, and expected to get through in time for the train, but he was a little too late. I thought the train had gone a little before he got there, from the remark he made. Mr. Duffner was on the far end of the platform, the west end, while Fish and me was talking, and Duffner walked up, and Fish remarked to me, That is the gentleman that bought the land. I then just turned to Mr. Duffner and said, "You are the gentleman that bought it." He spoke up very quick, "Yes; did you ever see the land?" I told him, "No; I never did." I then said, "I suppose you have seen it, haven't you?" He said he had, and it was fine timbered land. He said it was not the land he cared so much about as the timber. He said timber was very valuable. I told him it might be so, but timber so far off that I thought the expenses would overrun the profits, and didn't see how they would ever get it to the railroad. I did not know where the land was, and said to him that I supposed he knew more about it than any of the company except Henry F. Westfall and Watson Westfall. He remarked that the demand for the timber would call for a railroad, which would be bound to go up through that section of country in a short time. I remarked that I supposed if there was a railroad up through there it would make the timber valuable. When we first spoke about the land Mr. Duffner said I had a little money to invest and I thought it about the best investment I could make.

Ques. Did you make any remarks to the said Duffner or he to you, at the time you speak of seeing him at the depot, about the investigation of the title? And, if so, state what you may remember about it.

411 Ans. I did. I asked him how he found the title. He said it was good, and says my attorney says it is all right.

Cross-examination:

Ques. by M. T. Frame, att'y for p't'ff. What part of the time during the investigation was you in the clerk's office?

Ans. I don't know; I supposed it must have been towards the last of the investigation. It was when they read the deed from company. I expect I was in there about one-half an hour at least.

Ques. Were you present when the law was read?

Ans. I don't recollect.

Ques. Had you seen the contract the committee held which had been executed by the Duffners prior to that day?

Ans. Don't think they had any. I don't recollect; don't know anything about it.

Ques. Had the committee not reported to you that they had taken a written contract from the Duffners for the purchase of the land and had received a hundred dollars of the purchase-money on the day of the execution of the contract, and that afterwards, to wit, about June, Duffner had paid to them $2,000 more of the purchase-money?

Ans. This is the $2,000 that was sent here in the bank. I did hear there was $2,000 in the bank to be paid on this land. He did not come on for some time, and I supposed that the whole thing had fallen through with, and he had gotten his money or would get it, when it was determined he would not take the land. I did not know of any committee to report anything only as inquiry would be made. If any one knew of any one to purchase the land he was to let some of the company know. That was all I know about any committee.

412 Ques. Did not the company meet together prior to the negotiations of the sale to the Duffners and designate D. D. T. Farnsworth, Jackman Cooper, & George Henning a committee to sell this land or look after purchasers?

Ans. The company did meet several times or were called together to make arrangements to collect the money, pay the taxes, and fix things that was necessary, and at them meetings if any one wrote about this land or wanted to purchase the one receiving such a letter was to report to the company and state if any offer was made.

Answer objected and question repeated.

Ans. These men were not designated more than others to look after purchasers, so far as I know. Every man was to look after purchasers if he chose to.

Ques. Didn't you say at one time in my presence that the committee was responsible for this whole thing; that most of the company, except Farnsworth, Cooper, and Westfall, were farmers and knew nothing about these things, meaning titles, and had even charged you a commission for the sale upon the money that you had received?

Ans. I said this: If there was anything wrong in this it was between Farnsworth, Thomas, and Duffner, for the rest of us knew nothing about it. I have no doubt I paid some money towards expenses. One dollar was deducted out of the amount that I received.

Ques. Who was engineering the sale on the part of the company?

Ans. I did hear that it was a man by the name of Woods. I don't know anything about it.

Ques. Did you not know that D. D. T. Farnsworth and Cooper and Thomas were working at this sale for some time
413 prior to the execution of the deed you have spoken of by the company?

Ans. Well, they was trying to sell it, so they told me, providing they could get what the company wanted, which was $20,000. They were to see what was the best offer they could get for it and report to the company and see if they were willing to take such offer. It might have been Mr. Duffner or any other party.

Ques. Were they not also trying to sell it to a New York company prior to the sale to Duffner?

Ans. Not that I know of, unless it was to this Johns, who was here. I don't mean that I know that they were trying to sell to Johns.

Ques. Shortly after this sale did you not transfer your property with a view of avoiding any liability you were under by reason of this sale?

Ans. There is two sets of children. My two wives were sisters. The first children have got their share—the one has, but the other has not; but it is fixed so she will get it shortly. The property that came through my first wife the first children were to have, and that coming through my last wife her children are to have. The property was all in my name at the time of the sale of the land, and I conveyed the property in order that each set of children should get the property coming to them through their respective mothers.

Ques. Why did you not provide for them by a will instead of an absolute conveyance?

Ans. I suppose I could have done so, but it was not all in my hands; I had not control of some of it.

Ques. When were you married the last time?

414 Ans. I was married during the war.

And further deponent sayeth not.

W. D. FARNSWORTH.

* * * * * * *

FEBRUARY 19TH, 1887.

Present: John Brannon, attorney for defendants who have answered and H. C. Coon.

Present: M. T. Frame, attorney for plaintiff.

FREDERICK BRINKMAN, being introduced by the defendants and being duly sworn, deposeth and sayeth as follows:

Ques. by John Brannon, att'y for d'f'ts. State your age, place of residence in 1883, before and since, and occupation.

Ans. I am 41; have lived in Weston, Lewis county, West Virginia, since 1867; occupation, merchant.

Ques. Are you acquainted with the plaintiff, Joseph Duffner? If so, state, if you can, when and where you have met with him, as near as you can.

Ans. I know Mr. Duffner. I was introduced to Mr. Duffner in the year 1883, in the month of April, in Weston, on Main street. This is the first time I met him. I met Mr. Duffner again in the same month. The next time I met Mr. Duffner was in the month of July, 11th day. That day he introduced me to Mr. Fish, an attorney, from Cleveland, Ohio. Then I again met Mr. Duffner some two or three days afterwards; may have been four days. All these times I met him on Main street, in Weston. I met Mr. Duffner again in the month of August in Weston, at which time he introduced me to Mr. Shmeader.

Ques. Did you have, upon any of these occasions, knowledge of the business and purpose of Mr. Joseph Duffner's visits at the time you have stated?

415 Ans. Yes, sir; when I was first introduced to Mr. Duffner he told me he was coming over here to look at some land—I mean Buckhannon.

Ques. If you had, at any of the times you have named, any conversations with the said Joseph Duffner with respect to the business he named about lands in this country, state what it was, and all about it you may remember.

Ans. Well, Mr. Duffner he was coming over to Upshur county to look at some lands, and if they suited him he would buy. Well, I cautioned Mr. Duffner to be careful; that he was a stranger in this country, and there was a great many land titles—I called them "polecat titles"—and he might lose his money if he invested, and I advised him before he made any contracts whatever to see of our lawyers, mentioning Arnold, Bennetts, Edmiston, Judge Brannon, or his brother. Mr. Duffner told me he would be careful to see that everything was straight before he made any purchase. We parted then. A few days afterwards I again saw Mr. Duffner. He said he had looked at the land, and liked it first rate, and would go to Cleveland to get his att'y to come and investigate the title. I cautioned Mr. Duffner again, and referred him to the same attorneys mentioned. Mr. Duffner told me he had a good lawyer; had full confidence in him, and if he said the title was clear he would purchase. I said to Mr. Duffner that might be all right, but I would prefer a lawyer at home and in my own State. I told Mr. Duffner if he did not want to see all the lawyers to go and see John Brannon, as I had heard he had done a great deal of surveying through this country, and knew almost every rock that laid in it. He said he would

416 bring his own attorney. When I saw Mr. Duffner next I was introduced to Mr. Fish, his attorney. He told me he was going over to Buckhannon to investigate the title to the land—I mean Mr. Duffner told me this. I gave him the same caution as before. The best I remember his answer was that he would be careful. A few days after that I met them both again in Weston, and Mr. Duffner told me the title was all right, and he was going home to fix up and get the money to pay for the land and get his deed. I cautioned Mr. Duffner again, and told him to be careful; that his lawyer might be all right, but I would prefer some other man here at home. The next time I met Mr. Duffner I was introduced to Mr.

Shmeader and some other gentleman; I think he was lame. That was the time Mr. Duffner told me he wanted to sell this land. I think it was his son-in-law he wanted to sell to or get him to take an interest in it some way. I don't remember if anything else was said at that time. I saw Mr. Duffner and these two gentlemen when they returned from Buckhannon. There seemed to be some dissatisfaction about the land then.

Ques. Did you ever meet with a man named Baldwin; if so, when and where?

Ans. I believe I did, but am not sure of the name. I remember Mr. Duffner wanted to sell him the land. I asked Mr. Duffner to sell him some that I had. He said he would do so if he sold his land; that he expected to make a good thing on his land, and that this man had several saw-mills, I think he said, and that I might sell him my land at a good price. It runs in my mind that I saw Mr. Duffner a few days after that. He seemed to be very much disappointed in not having made a sale, and I think he remarked
417 that if the other man would not have the land or was dissatisfied with it he did not want it either.

Ques. In this last conversation you refer to, was there anything said by Duffner about the money or the money he had paid for the land? If so, state what it was.

Ans. If my mind serves me right Mr. Duffner said the gentleman did not — the land, and all he wanted was his money back. I do not want to prejudice Mr. Duffner, but that is the way it is in my mind.

Ques. You have stated in a former answer that at the time you met Fish and Duffner, on their return from Buckhannon, that Duffner said he was "going home to fix up and get the money to pay for the land and get a deed." State whether you are certain whether these remarks were made at that time or at some other time.

Question objected to as improper.

Ans. I remember something said about the deed. He may have said that he had the deed, but had not all the money to pay for the land. There was certainly something said about the deed. This was the time he talked about the deed, and I am certain it was the time he said he was "going home to get the money to pay for the land."

Ques. What is your nativity?

Ans. Hanover, Germany.

Ques. Was your conversation with Duffner in the German language?

Ans. Yes.

The witness wishes to make the following correction to the third answer last above: When Mr. Fish and Mr. Duffner came back from Buckhannon Mr. Duffner said he did have the deed, and everything was fixed up. It must have been before this time that Mr.
418 Duffner said he was "going home to get the money to pay for the land." It strikes me it was the time when he said he

was going home to get an attorney, and if the attorney said it was all right he would pay for the land.

Cross-examination:

Ques. by M. T. Frame, att'y for p't'ff. Have you any other corrections you want to make?

Ans. None that I know of.

Ques. How many times did you see Mr. Duffner & Mr. Fish going through your town to Buckhannon?

Ans. Did not see them but once. I did not see Mr. Fish but once.

Ques. How many trips do you know of Mr. Duffner making from Cleveland to look at the land, including the time that he purchased it and investigated the title?

Ans. I remember of two times.

Ques. How many times did you see Joseph Duffner pass through your town to Buckhannon up to and including the time Baldwin was with him?

Ans. If I could place that man Baldwin I could tell you.

Ques. How many times did you see Mr. Duffner pass through your town to Buckhannon, including the time that Duffner introduced to you a gentleman as Mr. Baldwin, who Duffner said was going to look at his land with a view of purchase, and who Duffner said owned several saw-mills?

Ans. It was either four or five times; I am not positive.

Ques. Are you certain it was as many as four times?

Ans. It may have been three times; I am not positive as to that.

Ques. Don't you know it was the second time?

419 Ans. I know it was not.

Ques. When was it that Chas. Shmeader was along?

Ans. Mr. Shmeader was along in August.

Ques. Was Baldwin, the saw-mill man and land buyer, along in August with Shmeader?

Ans. It seems to me that he was.

Ques. Are you certain?

Ans. No; I am not.

Ques. Hasn't the lapse of time and the fact that you had no interest or reasons to recollect confused these times or dates in your mind?

Ans. The dates I have given are correct.

Ques. Isn't the dates, when associated with these meetings and persons, confused in your mind?

Ans. I have only given one date, and I know that to be correct. I don't think my mind is confused about these dates by the association referred to.

Ques. Then why is it that you cannot say that Baldwin, who was introduced to you as a land purchaser and saw-mill man by Duffner, was along in August when you saw Duffner and Shmeader?

Ans. The only reason I can give I was very busy that day and paid very little attention to the men. I would not have known who

Mr. Shmeader was if I had not asked Mr. Duffner. I had a record of the one date I have mentioned.

Ques. You were not so busy on that occasion as to not have time to solicit Duffner to sell your land to Baldwin and to caution him about buying the land, were you?

Ans. The land was already bought by Mr. Duffner. I don't know if it was this day I asked him to sell the land. I
420 know I did ask him here in Buckhannon to sell the land, and may have asked him before. Mr. Duffner only spoke about a man by the name of Baldwin at different times, but I never knew who he was until I was introduced to him.

Ques. In your direct examination you gave what purported to be a conversation with Duffner and Baldwin, in which you said: "I met Baldwin, but am not sure of the name. I remember Mr. Duffner wanted to sell him the land, and I asked him to sell my land." Now tell us whether Baldwin was present when that conversation occurred or not.

Ans. The best I remember this gentleman called Baldwin, or whatever his name is, was standing opposite from Mr. Duffner and myself on the corner at George Ross' store, in Weston.

Ques. What time of the day did you first meet Duffner?

Ans. I think it was between 12 and 6 o'clock. The sun was out bright.

Ques. Who was with him?

Ans. There was another gentleman with him, but who it was I cannot tell.

Ques. Was it Baldwin?

Ans. Can't state.

Ques. Was it as early as one o'clock?

Ans. As I said before, it was between 12 & 6.

Ques. If Duffner got to Weston after dark, on his first trip to Buckhannon, and left for Buckhannon next morning, then you did not see him in his first trip, did you?

Ans. Yes; the first time I saw Mr. Duffner, and he said it was his first trip. This was in April, 1883.

Ques. You have stated that you met Duffner on his first trip to Buckhannon and had a talk with him between 12 &
421 6 o'clock, and that the sun was out bright. Now, if it is true that Duffner reached Weston after dark, going on his first trip to Buckhannon, and it was raining & snowing, and he left next morning for Buckhannon, then are you not mistaken about seeing him as he went to Buckhannon on his first trip?

Ans. I remember distinctly that Mr. Duffner and myself and another gentleman took a glass of beer at the "Tidal Wave." It may have been 12 o'clock at night. I won't say anything to prejudice Mr. Duffner or anybody else.

Question repeated.

If that is true, then I did not see him.

Ques. Isn't it possible that you are mistaken about the times when you saw Duffner and who was with him and, the conversations had at various times?

Ans. I think not.

Ques. If you did not see him on the first time he went to Buckhannon how could the conversation you have detailed as occurring on his first trip occurred unless it was some other trip you talked with him?

Ans. I saw Mr. Duffner twice in April, 1883, and I call that his first trip. If he was here before that time I don't know anything about it.

Ques. Isn't it true, in fact, that you don't know anything about this whole transaction until after Duffner had bought that land?

Ans. What I have stated I know to be true.

Ques. Isn't it true that you knew nothing about the title to this land, and told Duffner nothing about it, but merely tried to sell a tract you owned?

Ans. No; I cautioned him not to buy this land without
422 first consulting these lawyers I have mentioned. When we last took depositions Mr. Duffner acknowledged to me he was sorry he did not take my advice, as he thought I just had — favorite lawyer.

Ques. Where did he tell you that at?

Ans. In the town of Buckhannon, at the Valley-House sitting-room, in the presence of a dozen or more. We were speaking German.

Ques. Has he made any confessions on this trip?

Ans. No.

Ques. You have stated that you saw Duffner and Fish returning to Cleveland, after having investigated the title to the land, and that afterwards you saw Duffner and Baldwin going to look at the land, and that Baldwin was to purchase it, and that on their return Duffner said that Baldwin would not have the land and seemed to be much disappointed, and said that all he wanted was his money back. Isn't that wholly false?

Ans. To the best of my knowledge, all the statements I have made are correct.

Ques. If it is true that Joseph Duffner never was in Weston or Buckhannon after he and Fish returned from the investigation of the title, then is not your last answer false?

Ans. No; if Mr. Duffner & Mr. Baldwin was not in Weston after August they were there at that time.

Ques. Who was present when you had these various conversations in which you cautioned Duffner?

Ans. The first time I spoke to Mr. Duffner I don't remember who was present, but I remember the third time I saw him Mr. Fish was present. We were speaking in German.

423 Ques. Were there not two Germans present on the first conversation you had with him?

Ans. Can't state.

Ques. Did you point out any special defects in the title to the 40,000 acres of land or were your remarks of a general character, applicable to all lands in West Virginia?

Ans. I did not know of the 40,000-acre tract.

Ques. Then you did not know what survey he was buying?

Ans. I understood him to say the land of Farnsworth, Smith, and others; did not know how much land there was, but there was so much land in this part of the country with lapse upon lapse, and I have heard at times there was from two to eight paying taxes on the same land.

Ques. Did you not in the same connection offer to sell him a tract of land you owned?

Ans. I did.

Ques. You made an affidavit in this litigation between Duffner and these parties who sold him the land to be used on the motion to set aside the verdict Duffner had obtained against them, did you not?

Ans. I did.

Ques. Who introduced you to Baldwin?

Ans. Mr. Duffner.

Ques. Wasn't it at that time you went to the "Tidal Wave" saloon?

Ans. Can't state.

Redirect by JNO. BRANNON, att'y for d'f'ts:

Ques. You have stated in one of your answers on cross-examination that at one time, when you was talking to Mr. Duffner,
424 that Baldwin, or the man you took to be Baldwin, was "opposite." State what you mean by this. Was he in hearing of your conversation, or how was this?

Ans. He was in hearing.

Ques. Was your conversation in German?

Ans. It was.

Ques. State whether you are certain that upon the occasion of your seeing Duffner the first time that that was the time that he stated "he was going over to see the land and if he liked it he would buy it."

Objected to as leading and suggestive.

Ans. That was the time.

F. BRINKMAN.

* * * * * * *

FEBRUARY 21ST, 1887.

Present: John Brannon, attorney for defendants who have answered, and H. C. Coon.

Present: M. T. Frame, att'y for plaintiff.

PHILLIP THOMAS, being introduced by the defendants and being duly sworn, deposeth and sayeth as follows:

By JOHN BRANNON, att'y for d'f'ts:

Ques. State your age, place of residence in 1883, subsequent thereto, and your occupation.

Ans. I am 59 and past; my residence is Randolph county, West Virginia; prior to 1880 I lived in Pennsylvania.

Ques. Are you acquainted with Joseph Duffner, the plaintiff, and Charles and Mathew Duffner?

Ans. I am.

Ques. When did you first become acquainted with them?

Ans. It was in the month of April, 1883.

Ques. Did you have any transaction with Joseph Duffner
425 or the other named Duffners with respect to a tract of land; if so, when?

Ans. I did. It was in the same month before stated, the month of April, in the town of Buckhannon.

Ques. Now proceed and state all you may know in respect to the transaction referred to.

Ans. I came to Buckhannon; I cannot exactly tell the day of the month of April, 1883; it was late in the evening when I arrived at the Valley House, my usual stopping place. Shortly after my arrival the landlord, Mr. Ferrell, announced to me that Col. Woods, from Oakland, Md., was there, also stating to me that he was not in condition to see anybody. I asked him the reason for that. Mr. Ferrell stated that he had come there some four or five days prior—I could not exactly state; it might have been less—in company with some gentlemen from Cleveland, Ohio. I asked Mr. Ferrell where Mr. Woods was at that time. Mr. Ferrell said, Come with me and I will show you his room and the condition he is in. We went to his room, myself and Mr. Ferrell. Prior to going into the room Mr. Ferrell told me in the passage-way that Mr. Woods had been very much intoxicated since his arrival in the house. Mr. Ferrell was first to go into the room. I followed close behind him. We found Mr. Woods stretched out on top of the bed with his clothing on. I remarked to Mr. Ferrell that the objectionable atmosphere and odor in — room was such that a man could hardly stand it. Mr. Ferrell then pointed and said, "Mr. Thomas, look at the floor." The inspection of the floor explained the offensive atmosphere in the
room, for he had done his business on the floor. Mr. Ferrell
426 spoke in a loud voice and said, "Col. Woods, Mr. Thomas is here and wants to see you," but got no reply. I spoke very loud to him, but received no response. Somewhat later, the same evening, Mr. Ferrell introduced me to Joseph Duffner, his brother, Charles Duffner, and his son, Mathew Duffner, in the common sitting-room of the hotel. After a little preliminary talk Mr. Duffner told me he had come here with Mr. Woods and his, Duffner's, brother and son to look at the 40,000 acres of land—the Wilson survey. He then stated he had been to the land already, and had examined the land. This was on their return. I told Mr. Duffners if they had a room in the house, and they said they had, and we proceeded to the room. I asked Mr. Duffners how they liked the looks of the land, and Joseph Duffner answered, "Very well." I asked Mr. Duffner—Joseph Duffner—if they had any intention of buying the land. He said they liked the land well and would purchase it if the price would suit. I told Mr. Jos. Duffner that I

would act not independently, as I was only one of a committee of three to make a sale of said land. I made the remark—I must put that in to keep my testimony straight—that Mr. Woods had come with those parties; that he would naturally want to see to the negotiations, if any could be made. Mr. Joseph Duffner stated then, in the presence of all of us together, that Mr. Woods had been drunk since their first arrival in Buckhannon, and still found him in the same drunken condition on their return from the inspection of the land, but he could not or would not transact any business with a drunken man. I told Mr. Jos. Duffner if their intentions were to purchase the land they could do so with a committee appointed—authorized to sell it. I don't remember
427 everything that occurred then, but I do positively remember that we made the arrangement to meet next, and Mr. Joseph Duffner and his company showed their willingness to meet us. We did meet the next morning—don't remember the hour—on the second floor of Mr. D. D. T. Farnsworth's store. After some preliminary talk, I think it was myself—the whole committee was present, Mr. Farnsworth, Mr. Cooper, and myself—I stated to Mr. Jos. Duffner the condition and the title that would be given or could be given to a purchaser of the land, also stating the amount of acres and — the reserve may be, but not positive that the actual settlers might still occupy. I think Mr. Duffner asked the question, "How much the settlers did occupy." I told him I could not state that, but that the shareholders of the land collectively together would; I have forgot the words used specially; that they would give him a title that the survey after the legal settlers that could hold under the statutes of the State; that the land should contain 20,000 acres, and, if not, any shortage from that amount would be made up in *pro rata* per acre by the shareholders to the purchasers. I mean by the price upon the basis of 20,000 acres. I also stated to Mr. Duffner at that time that those shareholders collectively would only sell the original survey, and whoever would purchase it from them be obligatory with them to get the settlers reconciled. I think Mr. Joseph Duffner asked us as a committee, not addressing me individually, the price that the committee would ask for the survey. I am not positive who made the answer as to price, but I think it was D. D. T. Farnsworth, also stating at the same time to Mr. Jos. Duffner that the committee was not authorized on all points. Mr. D. D. T.
Farnsworth then stated that the deed that would be given
428 was a tax-title deed; the same as they had received from the State; in the same form. Mr. Joseph Duffner stated then that they would like to purchase the land, but asked a little time on the part of the purchase-money, and I think that Mr. Farnsworth stated that the price asked for the land was so little for the survey that the committee had no power or any time prior to that transaction except to sell the land for net cash. I think myself I spoke to Mr. Joseph Duffner that I had been to a great deal of expense, some trouble, as I represented in that committee nearly one-half of that land; that I looked for a considerable compensation for my labor whenever a sale was effected. Mr. Joseph Duffner, his brother,

and his son went to the corner of the room and consulted. On their return to the table where we all sat together—the committee—Mr. Joseph Duffner stated that he would give each of the committee, being three, five hundred dollars apiece. I then stated to Mr. Joseph Duffner that would not compensate me for my time and labor that I have spent on the matter. I stated to Mr. Duffner—think I done it myself in the presence of the committee—that we could agree to make him a deed without conferring with the shareholders, and we may not succeed. Mr. Jos. Duffner then stated, I think in the presence of the committee, that it was immaterial for him or for them. They would pay $20,000 for the survey, and if the committee could procure him a deed, no price stated, that he was willing to pay that much for the land. We had still at that time with the committee and Mr. Duffner collectively to come to a definite conclusion about the cash payment when the deed was made or extension of part payment. Mr. D. D. T. Farnsworth had already got pen and ink and commenced drawing up a con-
429 tract, had a few words written, and then said, If there is nothing definite about payments I may stop writing. I am not positive who made the statement, myself or D. D. T. Farnsworth, that we would try as a committee to secure the deed from the different shareholders, and Mr. Duffner stated, If you can obtain the deed for a less amount than $20,000, which I am willing to pay for the survey, it was immaterial to him who he paid it to. I think Mr. Farnsworth then drew up an agreement that the committee would try to secure him a deed within 40 days, I think, from that time. The kind of deed that was to be given was, I think, embodied in the agreement. When the agreement was explained I think Mr. Farnsworth read it — their presence. The amount inserted in it, I think, was $15,000 for the survey. Mr. Joseph Duffner, his brother, Charles Duffner, and his son, Mathew Duffner, I think, signed that agreement. When the agreement was signed, right thereafter, I think myself and Mr. Farnsworth—we had a short consultation; also Mr. Cooper. Mr. Cooper, not being in a bodily condition to do any service, told myself and Mr. Farnsworth that whatever we could do in the matter would be satisfactory to him. I think I told Mr. Joseph Duffner that I think I would be entitled to a fair commission on that land; not being an owner thereof, asked him if he would be willing that the amount — about $15,000, as stated in the agreement, providing we would get a deed for him—when I speak of "him" I mean all the Duffners—if the amount of $15,000 should be mentioned in the deed as the price paid for the land. He said it was immaterial to him who received the balance, and if the committee failed to procure the deed as stated the committee would receive nothing. Mr. Farnsworth drew up a
430 little agreement—the amount was embodied in the agreement between myself and Mr. Farnsworth and Mr. Duffner—leaving the amount of $15,000 out. That agreement was for the service rendered—for the time and labor and expenses that may arise from that time up in procuring the deed. Mr. Duffner agreed that he would pay the committee, on the procuring of the deed and when

satisfactorily acknowledged, the amount of $6,500, to — paid on or before the first day of December, 1883. That agreement was signed by Mr. Duffner in the form of a note or some sort of due bill. When that was done Mr. Duffner made a payment, to apply on the $15,000 purchase-money, of $100. Mr. Farnsworth then stated to Mr. Duffner that that was a small amount for such a large purchase; that we may go as a committee and work with the shareholders obtaining the deed, but if he, Mr. Duffner, would change his mind the loss would not be heavy on him and we would lose all our time and expenses. Mr. Duffner stated he did not take a large amount with him, merely travelling expenses, and that he would obligate himself—this was a verbal obligation only—to remit to Mr. Farnsworth within 10 days from that time $2,000. I don't think there was anything more done at that time.

Ques. Do you remember whether there was anything said at the time this agreement, as you call it, was signed by the Duffners—that they or either of them said anything about an examination of the title of said land? And, if so, state anything which may have been said with respect to the examination of the title.

Objected to as leading. Question re-formed.

Ques. If anything was said by either of the parties in respect
431 to an examination of the title state what was said and by whom.

(Objected to as suggestive.)

Ans. There was mention made on these negotiations about examining the title. The committee, myself, and Mr. Farnsworth stated to Messrs. Duffners that we wanted them to make a thorough search of all land books, either by their own attorney or some one they may engage in this State, to satisfy themselves about the correctness of the title before paying their purchase-money. I think I made a statement to Mr. Joseph Duffner telling him that the lawyers in this State would be more familiar with land titles, and he may get the service of one or as many as he liked, not designating any one particularly. I think the reply Mr. Jos. Duffner made me at that time—that he had in his employ, in the city of Cleveland, Ohio—I can't use the exact words, but intimated—a first-class lawyer, who would look to his interests, not mentioning any name. I don't think there was anything more said at that time that I remember.

Ques. You have employed language in your first answer in speaking of what you call a committee as a committee "authorized to sell the land." How are we to understand you about this? And state whether you meant by the language employed that that committee was authorized to sell the land or not.

Question objected to as leading.

Ans. They were.

Ques. State whether that committee was authorized to make a sale binding the owners.

(Objected to as leading and improper.)

Ans. No, sir.

Ques. If you, after seeing Joseph Duffner in April, as you
432 have stated, met with him after that state when and where.

Ans. The first time after this transaction was in the month of July, in Buckhannon.

Ques. State, if you know, the purpose of his visit then.

Ans. Mr. Duffner came here, as I supposed—in fact I know that he came—to consummate the purchase of the land.

Ques. If anybody was with him state who was with him.

Ans. Mr. Joseph Duffner introduced me to a man by the name of Fish, from Cleveland, Ohio, as his attorney. Mr. Duffner stated he had brought his own attorney, and that he would make a thorough search of all the land books, and, finding everything correct, that he was prepared to receive his deed and pay the purchase-money.

Ques. Do you know whether such examination was made? And, if so, state when and where and all you may know about it, and by whom.

Ans. The examination was made in the office of the county clerk. I was present a good deal of the time; not always. Mr. Farnsworth (D. D. T.) was present. Henry F. Westfall, Valentine Strader, Jackman Cooper, and number of other shareholders. I think John Crislip was in, and I think Mr. L. S. S. Farnsworth was there a part of the time, and also Mr. Joseph Duffner and Mr. Fish, who was doing the examination of the land books.

Ques. What do you mean by land books?

Ans. I mean it in the broad sense—the title books of all lands in the State.

Ques. State how long, if you can, the examination you have referred to continued.

Ans. My nearest recollection is they occupied nearly three
433 days; think they got through in the afternoon of the third day.

Ques. Give us to understand, if you can, the time you was present during the examination.

Ans. I was in and out during the three days, more or less. I was present at the consummation. The deed was made out, as I understood. Mr. Fish, attorney for Mr. Duffner, announced that he found nothing wrong in regard to that land; told Mr. Duffner, "You can pay your money and take your title."

Ques. After this conclusion that you have mentioned where did you go to?

Ans. If I recollect right I went down to the hotel.

Ques. If you left Buckhannon where did you go to thence?

Ans. I went to Weston the next day, in the morning, with the intention of going to Cleveland, Ohio.

Ques. Was this conclusion on a day that you can now name?

Ans. I cannot remember the day.

Ques. You say "with the intention of going to Cleveland, Ohio." State w hether you did go thence to Cleveland, Ohio.

Ans. I did.

Ques. Did you travel with any persons to Cleveland, Ohio, from Buckhannon?

Ans. I did.

Ques. State with whom.

Ans. Mr. Joseph Duffner and Mr. Fish.

Ques. State whether you stopped in the city of Wheeling.

Ans. We did.

Ques. Was there any examination made in the auditor's office in said city by any of the travelling parties you have named?

434 If so, state, if you know, by whom and for what purpose.

Objected to as irrelevant, because the devilment had been done.

Ans. Mr. Fish stated to me in the morning after breakfast—being delayed in our travel—that he would like to go to the auditor's office and look over the matter and see if the returns were all right. Mr. Fish, Mr. Joseph Duffner, and myself started out from the hotel — proceeded to the auditor's office. Mr. Fish entered the office. Mr. Duffner and myself did not.

Ques. State, if you can, the day you arrived in the city of Cleveland; or, if not, as near as you can the day of the month.

Ans. Cannot state the day of the month. It was the latter part of July, 1883.

Ques. State if you had been in Cleveland at any time before that time in 1883, and when you had been in Cleveland before that time.

Ans. No, sir; not in the year 1883. I had not been in Cleveland prior to that time except in 1851.

Ques. Was you there in the year 1883 after that time? And state, if you can, how long you remained in Cleveland the first time you were there, in 1883.

Ans. I was there afterwards in the month of September, 1883. The first time I remained between 5 and 7 days.

Ques. Do you know a man in Cleveland of the name of William E. Ransom?

Ans. I do.

Ques. Do you remember of meeting with him and D. D. T. Farnsworth?

Ans. I do.

Ques. State, as near as you can, when that was.

435 Ans. It was in the latter part of September, 1883, the time of my second visit.

Ques. Do you know who introduced the said Farnsworth to the said Ransom? If so, state by whom he was introduced, and when.

Ans. I am not positive, but I think I myself introduced Mr. Farnsworth to the said Ransom in the latter part of September, 1883.

Ques. by John Brannon, att'y for d'f'ts. Did you ever know a man named Baldwin, from the region of Cleveland, Ohio?

Ans. I know a man by that name, but he does not live in Cleveland, to my knowledge.

Ques. Did you ever meet with a man by the name of Baldwin, in

company with Jos. Duffner and Shmeader, when going to look at the 40,000 acres mentioned or at any other time?

Ans. Not to my knowledge have I met them together.

Ques. Have you seen a man named Baldwin in company with Joseph Duffner anywhere?

Ans. I have once, in the city of Cleveland.

Ques. Did you ever see them together or see the said Baldwin elsewhere at any time before the deed was made by the Hennings and others to the said Duffners?

Ans. No, sir; never saw or heard of the man.

Ques. You have stated that said deed was made in July, 1883. Now state, as near as you can, when it was and where it was you first met said Baldwin.

Ans. I met Baldwin on my second visit to Cleveland, in the latter part of Sept., 1883.

436 Ques. State whether you ever told Jos. Duffner that you were a German and would do nothing out of the way, and that you had been a member of the Pennsylvania Legislature, in the presence of the said Baldwin.

Ans. Not in his presence.

Ques. If you had any conversation with Duffner in the presence of Baldwin state whether it could have occurred before Joseph Duffner accepted the deed.

Ans. I will only affirm that I never knew Baldwin except when I met him the latter part of September, 1883.

Ques. State, if you know, whether said Baldwin and Joseph Duffner came to Buckhannon to look at the land in question.

Ans. I don't know of my own knowledge.

Ques. Were you ever a member of the Pennsylvania Legislature?

Ans. I served part of a term.

Ques. Did you have any conversation with the William E. Ransom you have spoken of in respect to this land title, and so forth, or about it being the best bargain you had ever seen before the deed of Henning & others was made to the said Duffners?

Ans. No, sir; I had never seen the gentleman until the deed had been delivered to Mr. Duffner, and first saw him upon my first visit to Cleveland, in the latter part of July, 1883.

Ques. Can you state, if you know, how long it was after Duffners returned from their visit of inspection to the land, in April, 1883—to the hotel in Buckhannon—that you saw the said Duffners?

Ans. I do not know of my own knowledge.

437 Ques. State if at the time they, the Duffners, went to visit the land you stated to them or either of them they had better not say anything about their business.

Ans. I don't think I did, as I did not see them until they returned.

Ques. Did you ever make any such remarks to them or either of them at any time?

Ans. Not to my knowledge.

Ques. State all you may have stated to Joseph Duffner or to

Mathew or Charles Duffner about the title to the land before the making of the deed to them, as to its goodness.

Ans. All the assertions I have made to those parties was simply this, that I considered the title good; never mentioned any other title but a tax title; also mentioned that time the only hindrance in the survey that may arise would be the amount of acres the legal settlers may occupy.

Ques. Was this statement made at the time of or after the time you have spoken of that Joseph Duffner spoke of having the title investigated?

Ans. It was before that time.

Ques. State what your opinion was as to the title at the time you spoke to Duffner as to the title.

(Objected to.)

Ans. My opinion was, since the time I was first connected with the business of the land in 1880, was that the title was good.

Ques. Did you, in company with D. D. T. Farnsworth, have any conversation with Geo. M. Fleming about engaging him in any manner in connection with this land for yourselves or others professionally?

Ans. I think we once had, not knowing that Mr. Duffner
438 would bring an attorney. Myself and Mr. Farnsworth met Mr. Fleming somewhere about the court-house grounds, to the best of my recollections, and had a short talk with him.

Ques. State whether your recollection is sufficient to enable you to state positively whether this conversation with Mr. Fleming occurred at the place you have stated or in Mr. Fleming's law office.

Ans. To the best of my knowledge it occurred in the grounds I have designated.

Ques. State, if you can, what was said or proposed by you or the said Farnsworth or by both of you to the said Fleming at the time you refer to.

Ans. The statement that was made by either of us—don't know if it was myself or Farnsworth—was simply this, that we had effected a sale of the Wilson tract or the 40,000 acres. We wanted the parties to examine the records here and, if he was at leisure, we should recommend them to him. He thanked us for it and that was all that was said.

Ques. Did you, by expression or manner or action, express or indicate to him a suggestion or wish or desire that he should make any report favorable to a consummation of a sale to Duffner or as to title of the said land?

Ans. I never indicated by word or gesture any desire on our part to do anything, favorable or unfavorable, in the consummation of that sale, only meaning that he should make a true report as he should find it.

Cross-examination:

Ques. by M. T. Frame, att'y for pl'ff. What sum of money was the committee authorized to sell this land for?

Ans. They were under no instructions that I know of.

439 Ques. You have said in your direct examination that you told the Duffners that you had "spent a great deal of time and labor and money about the sale of this land." Was that true?

Ans. Yes, sir.

Ques. State some of the negotiations in which you had spent time, labor, and money.

Ans. It would take me a long time to state all the different trips & parties I had been with. I think the first negotiations was in the fall of 1882. There was a party in New York city intended to purchase the land. I conferred with the parties. They sent a man out here, supposed to be an agent of theirs—I don't know his name—who wrote for me to meet him at Grafton. I started and went to Grafton, 45 miles distant, on horseback. When I arrived at Grafton I inquired for the man, who had not designated where he would be. I traced him to the Valley House, at Grafton. I asked the landlord where the gentleman was. He said he arrived there two days prior to that, had gotten breakfast, and he had not seen him since. I asked him if he could give me some description of him. He said he could not, only having seen him at the breakfast table, but he gave me a general outline of his appearance. I searched through town and found persons who had seen such a man, but could not tell me where he was then. Toward evening I traced him to a low drinking-house, and he was drunk. I called him out and told him who I was. He said he was not in a condition to go to see the land and returned East, and I returned home. I afterwards received a letter from the parties in New York, asking me to come down, if possible, and see them. I went down in the

440 month of January, in 1883, to the city of New York. I found the parties, and they were not such persons as I wished to see. I showed them the plot of the land and told them all that I knew. They asked about payments. I told them their letters had stated they were cash men. I also found out that they were men who had no substance and were in bad standing. Their names were Frederick Stahler—the other names have slipped my mind. The trade fell through and I returned home. The year prior to this Col. Woods was at our place, Beverly, Randolph Co. He represented himself to be a purchasing agent for lands. I think Woods was in Beverly in the fall of 1881, but what transpired afterwards would bring it to the spring of 1882. A young man from Boston and Col. Woods' brother came to Beverly in the spring. He said his bro., Col. Woods, had told him about a tract of land, and that this Boston man was the agent of some capitalists who wanted to buy land, and they wanted to go and look at this Wilson tract. I came over to Buckhannon with them. They got Capt. Munday to go with them to see the lands. I was too much fatigued to go. I staid here until they returned, which I think was some three or four days. They told me they had only seen a part of land and that it was a very desirable tract. On the way home Mr. Woods — if there was any sale made I would hear from his brother in a short time. I became responsible for and had to pay the hotel bills, both

at Beverly and Buckhannon, for these two men. It was a long time before I heard from them, but before I heard from these parties I got a letter from Wm. Jenkins & Co., of Philadelphia, making inquiries about the land. They wanted me to send them a plat
441 and give a description of it as near as possible. I did so; and the answer came back that it — too far away for them to lumber at the present time. I got a letter from Col. Woods, who said — thought he could negotiate the land, but parties were far off. I think I got a second letter, which said he had seen some of the parties and was not positive how the matter would turn out, but he would do his best; don't know if I ever got any more letters from him. The next time brings me to the time I met Col. Woods here with Joseph Duffner and his brother.

Ques. Why did you take this interest and assume this expense and trouble about the sale of a tract of land in which you had no direct interest?

Ans. I expected to derive a benefit from the sale of it.

Ques. State what benefit.

Ans. A sort of commission.

Ques. State the amount.

Ans. There was no amount estimated.

Ques. State how your commission or compensation was to be ascertained in case of a sale.

Ans. Only by myself.

Ques. State the contract you had for compensation and with whom.

Ans. There was no written contract. I was acting as one of the committee for George Hennings & Son, who owned nearly one-half or 19-fortieths. I was to look after their interest in the land and find a purchaser, and, as the parties were scattered, sell it if I could. I had to make my compensation out of the sale of the land.

Ques. Is that the only answer you can make to the question?

Ans. Cannot make any different answer.

442 Ques. Then Henning & Co. authorized you to make a sale of this land, leaving you to fix the price on the land?

Ans. Not positive—without conferring with them, which I did.

Ques. Did you not first agree with Duffner on a sale at $20,000, he agreeing at the same time to give the three members of the committee $500 each in addition, and in the preparation of the contract was not the words or figures "twenty thousand" written as the consideration price, and afterwards was not the words or figures "twenty thousand" erased and fifteen thousand inserted?

Ans. As to giving the three of the committee $500 each, this is correct. I would not agree to that, saying it would not compensate me. When the mention of the $20,000 was made there was a time asked for part payment. Mr. Farnsworth spoke up and said that land cannot or will not be sold except for net cash. I am not able to say whether the $20,000 was written in figures or words; either or both, I am not able to say. I mean I do not know whether the words or figures $20,000 was written in the contract and afterwards erased and $15,000 substituted or not. I did not read the contract.

Ques. Do you pretend to say, as a truth, that you individually or you and Farnsworth together supposed that the vendors would refuse to confirm a sale at $20,000, $15,000 of which was to be paid in cash, and the residue, $5,000, on a reasonable time, while at the same time you supposed and thought that they would confirm the sale and execute a deed at $15,000 cash, merely for the sake of having it said they had made a cash sale?

Ans. I did not assume as one of committee or feel authorized to make any negotiations except by the instructions I had received, except for cash.

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Ques. Was you not authorized to make the sale on the best terms you could?

Ans. That all may be, but I was instructed to use my best judgment.

Ques. Which was your best judgment, if it would have been best for the company if you had reported the sale at $20,000, $15,000 of which was in cash and $5,000 on a reasonable time, or a sale for $15,000 cash?

Ans. I do deny that anything was spoken as to what should be paid and what should remain, if we decided to give time. I am very clear about this.

Question repeated.

Ans. My judgment was to act according to instructions.

Ques. Will you please answer the question last propounded and repeated, without any argument or evasion about it?

Ans. It would have been best for the company to have accepted the $20,000.

Ques. Then you are forced to admit that you did not act according to your best judgment for the company?

Ans. I thought I did under the circumstances.

Ques. Was not this story about the company, in your opinion, refusing to take $20,000, a part of which was on time, a mere subterfuge invented by you and Farnsworth as an explanation or excuse for $5,000 of the company's money, which you received and divided between you and Farnsworth and which you are now enjoying?

Ans. No, sir.

Ques. Why was it that you followed Duffner to Cleveland immediately on the consummation of the sale?

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Ans. I was in need of some money. I spoke to Mr. Duffner right here in the court-house. He said he could raise me that money or a part of it; this was one reason why I went. Another reason was that I had a body of land, called Ward land, that I wanted to sell, and Mr. Duffner said he — introduce me to some capitalists and assist me to make a sale.

Ques. Wasn't your chief object to cash Duffner's paper?

Ans. Certainly.

Ques. And didn't you want to accomplish that fact before he found out that he had no title to the land you had sold him?

Ans. I had no such thought in my mind.

Ques. Wasn't his paper at that time good for the amount and didn't you submit to a large discount?

Ans. The paper I held was simply an agreement, and when Mr. Duffner didn't raise the money as I positively expected I went to Mr. Duffner and asked him if he would please exchange the contract and give me negotiable paper, and he did so.

Ques. Didn't you suffer a large discount before you left the city?

Ans. I did.

Ques. State the amount for which you had Duffner's paper and the amount received in cash therefor.

Ans. His paper called for $3,250 without interest; I received $2,400 therefor.

Ques. Was the paper not due in less than 3 months?

Ans. If my memory serves me right it was payable the first day of December.

Ques. Did not Duffner pay you $3,000 for the paper, and the
445 other $400 you gave to some commission men for negotiating the loan on Duffner's property?

Ans. Mr. Duffner did not pay me anything.

Ques. Didn't Duffner give you a check on Weeks' Bank for $3,000?

Ans. No, sir; Mr. Duffner didn't.

Ques. Didn't you receive $3,000 and then you paid Ransom, or the commission men, $400, which reduced it to $2,600?

Ans. I did not.

Ques. State how the transaction was done.

Ans. When I negotiated that paper, which I considered perfectly good, I first went to the bank where Mr. Duffner does business and they declined to take it without assigning any reason therefor. Mr. Hills, who accompanied me, and myself went — two or three other banks without making any negotiation for the paper. I spoke to Mr. Hills and asked him what that meant, that the paper of a man of Mr. Duffner's standing could not be negotiated for that amount. As near as I recollect, the answer he made was this, that Mr. Duffner had some trouble about some forgery being perpetrated in checks or notes, and that the banks felt uncertain about his signature. I felt a little uneasy myself, knowing that Mr. Duffner had signed that note, and I asked Mr. Hills, one of the firm of Ransom, to negotiate the paper before I left the city. He told me that the money would be doubtful of being raised by Mr. Duffner without his giving a mortgage on some of his real estate. What occurred between Mr. Duffner and the firm of Hills & Ransom I do not know. I sold the note to Mr. Fursier, in the firm with Hill & Ransom, for $2,400.

Ques. Didn't you come home immediately thereafter and invest that money in the name of your wife?

446 Ans. No, sir; that money was paid in New York on indebtedness I owed.

Ques. Wasn't that indebtedness for borrowed money which you had invested in land in the name of your wife?

Ans. No, sir; it was for leather and hides I owed in New York after I had lost my property by fire in the year 1879.

Ques. Didn't you tell Duffner, Hill, & Ransom at different times that you wanted that money to raise an incumbrance that was on your land, and that you were sued?

Ans. It was not I that was sued, it was my wife.

Ques. Then you paid this money to her credit.

Ans. No, sir; I sent that money to New York.

Ques. Then what you told Duffner and Hill and Ransom about wanting the money for the purposes mentioned in the preceding question was untrue, was it?

Ans. I don't think I told them any untruth about it. It was to extinguish the debts.

Ques. Didn't you tell them you were sued?

Ans. No, sir. Well, we were sued jointly.

Ques. Wasn't that a suit brought for the purpose of avoiding the deed to her and subjecting the land to the payment of your debts?

Ans. I don't know how to answer that. When the land was purchased it was her money that purchased it.

Ques. Was it a suit brought to enforce the payment of the purchase-money?

Ans. Yes, sir; certainly.

Ques. Haven't you discharged that purchase-money since you received the money on the Duffner notes?

Ans. It was done on my return from Cleveland. My
447 youngest daughter was on a visit to my son-in-law, who, hearing of our situation, said he would advance my wife the money on her paper, and I brought the money with me, $2,100, I having gone there to bring my daughter home.

Ques. State the name and post-office address of the man who loaned you the money.

Ans. His name is H. H. Furman, Bloomsburg, Columbia Co., Penn.

Ques. How did you pay the parties in New York? And state the amount?

Ans. I purchased a draft and sent them. It was for $2,280.

Ques. State their names and number.

Ans. Wm. Sherwood & Co. They were located at Ferry street, New York. They are now broke up and scattered.

Ques. When did you buy the draft and on what bank was it payable?

Objected to as irrelevant and impertinent to any question in the cause.

Ans. I bought it in the city of Wilkes Barre, Louisiana county, Pennsylvania. I do not know what bank it was payable in New York.

Ques. Isn't it a fact that you are wholly insolvent and was at the time of receiving this money, and that now your wife is the owner of an estate in Randolph county of great value?

Question objected to as irrelevant and impertinent.

Ans. I am insolvent to-day, never having paid my indebtedness off. My wife owns an estate in said county, I presume, of considerable value.

Redirect:

Ques. by John Brannon, att'y for d'f'ts. If true that Duffner
448 had agreed to purchase the land in question of all the owners at $20,000 and the purchase-money price was reduced to $15,000, state whether an alteration, if any, made in the contract by erasing the $20,000 and inserting $15,000 as the purchase-money—the same was done with the knowledge and consent of the said Joseph Duffner.

Ans. It was.

Further deponent sayeth not.

PHILLIP THOMAS.

* * * * * * *

FEBRUARY, 22ND, 1887.

Present: John Brannon, attorney for the defendants who have answered and H. C. Coon.

Present: M. T. Frame (attorney for plaintiff).

WATSON WESTFALL, a witness of lawful age, being introduced by the defendants and being duly sworn, deposeth and sayeth as follows:

Ques. State your age, residence in 1883, since and prior thereto, and your occupation.

Ans. I will be 69 on the 5th of next month. My residence is in the county of Upshur, and have always lived in the territory embraced in Upshur Co. My occupation is surveying and farming.

Ques. Are you acquainted with Joseph Duffner, Charles Duffner, and Mathew Duffner? And, if so, state when and where you became acquainted with them.

Ans. I am slightly acquainted with them and know them when I see them. I was first introduced to them in April, 1883, in the town of Buckhannon.

Ques. Was you introduced to them or to Mathew Duffner by D. D. T. Farnsworth?

Ans. I do not recollect who did introduce me, but it was
449 not Major D. D. T. Farnsworth. I do not recollect of seeing him that evening.

Ques. Did you have occasion to go to see the Duffners at the time you had the introduction? And if any business arrangement was had between you state what it was.

Ans. I was passing through the town of Buckhannon and somebody called to me and said there were strangers in the town wishing to see me. I went with the person—don't remember who it was—to the Valley House and was introduced to the said Duffners and a man by the name of Woods; and upon that occasion Mr. Woods stated to me that he had brought the Duffners here to see a piece of

land, and wished me to go in company with them to see the land. I then told Messrs. Duffner that if I went with them and showed the land that they must pay my fees, which they agreed to do and did so accordingly.

Ques. State what time in the day this was and whether you saw D. D. T. Farnsworth at that time with the Duffners while you were with them.

Ans. The above conversation took place after dark at the Valley House. I have no recollection of seeing D. D. T. Farnsworth that evening with said Duffners at the Valley House or elsewhere.

Ques. State what tract of land it is that they wanted you to go with them to see.

Ans. I understood it to be a survey made for Thomas Wilson in the county of Randolph and known as the 40,000-acre survey, and being, as I understood, the same land sold in the county of Upshur for non-payment of taxes in the name of Wm. H. Morton.

Ques. Did you go with them? And, if so, state all about what was done by you or them in respect to looking at the land and all that was done by you or them in respect thereto.

450 Ans. On the next morning, after being introduced to them, the same being Saturday morning, I came to the town of Buckhannon and started with the said Duffners to see said land. I went with them that day as far as Burner's mills; from there I returned home, the next day being Sunday, agreeing — meet them at Isaac W. Simons' on Monday morning. I gave them directions about the way. On Monday morning I met with them at Isaac W. Simons'. I found them sitting in Simons' yard or near the house, at which time and place we consulted as to the best method of going upon the land to see it. While in conversation there was something said, but can't give the particulars, as to timber, coal, and probably something said as to titles or lapse of land. At this time I remarked to them that Isaac W. Simons could give as general — description of the land, timber, &c., as any other man in that country, as he was an old settler, and, said Simons being called upon either by Mr. Duffner or myself at which time and place, he, the said Simons, did have some conversation with the Duffners; as to the particulars I cannot now give them. At or about this time the horses and carriage were ready, and we started from said Simons' to see a portion of said survey. We went down to the forks of Buckhannon and across said river, following the public highway by way of Rev. Brook's. After following the road for a short distance we examined the timber and land to some extent. That evening we crossed the left-hand fork at Stephen Morgan's mill and stayed all night at Stephen Morgan's. In passing from Simons' to Stephen Morgan's mill I suppose we passed about 5 miles through the 40,000 acres. On the next morning we left the said Morgan's and

451 travelled probably a mile and half, at which point we entered again upon the 40,000-acre tract, where we stopped and went out and looked upon the land and timber. When we returned to the road and carriage we travelled some 4 to 6 miles through the 40,000-acre survey; this is the probable distance, except

some of the travel was upon the adjacent 60,000 acres. After leaving the 40,000 acres we came down the Middle Fork river to a place called Queens and to the Staunton and Parkersburg turnpike, where I left them and went home, promising to meet them next morning in Buckhannon.

Ques. Did you show to them any lines or corners of the 40,000-acre survey?

Ans. I did point out to them as near as I could where the division lines between 60,000 acres and 40,000 acres, Wilson surveys, crossed the roads where we travelled. As to corners, I do not think I was near enough to show them where the corners stood. I did point out down a hill where one of them stood, on Jenk's Fork of Middle Fork.

Ques. Were you yourself well acquainted with the location and boundaries of the said 40,000 acres?

Ans. I am well acquainted with the division lines between the 60,000 acres and the 40,000 acres, Wilson surveys. I know the location of the said 40,000 acres.

Ques. State whether at any time before you left the land Joseph Duffner or either of the other Duffners wished or wished you to go with them further through the tract to make further examination of it.

Ans. In consequence of the inclemency of the weather they thought it difficult to go further upon the land.

452 Ques. You have spoken that something was said about lapse on the tract of land. State whether you heard any conversation by the said Simons with the said Duffners or either of them about lapse or other interfering surveys.

Question objected to as improper.

Ans. Upon mature reflection I do recollect that Isaac W. Simon did say something to the Duffners about lapse on said 40,000 acres. He stated that his tract was embraced in the 40,000 acres as he had always understood the location of said 40,000 acres. There was something said between Simons and the Duffners at this or another time of conversation.

Ques. At the time you directed the said Duffners to go to the said Simons and remain there until you joined them on Monday did you not know that said Simons owned and occupied a large tract of land inside of the said Wilson land and in hostility to the title thereof?

Ans. I did.

Ques. Did you learn in conversation with Joseph Duffner, from him, the amount that Woods asked him for the said tract of land at the time you went to look at the land or on your return?

Ans. I did learn from him while with him on that trip that Woods asked him $40,000 for said tract of land.

Ques. Did you then or thereafter on that trip state or suggest to him that he might get it for a lesser sum? If so, state what you said to him in that regard.

Ans. I told Mr. Joseph Duffner that I believed the company owning said survey would sell the same to him, provided that he could

get away from negotiating with Woods, for $20,000 or $25,000, as I had learned from the company that it could be purchased for that amount. I had learned from them that it could be purchased for $20,000.

453 Ques. State what the said Duffner said or did when you made this statement to him.

Ans. He remarked that he would first see Woods, as Mr. Woods had come with him or brought him here to see the land and to sell it to him.

Ques. Was there any proposition made to you by any one to aid in the purchase of this tract of land at the amount you have indicated above? And, if so, state by whom and all about it, and when.

Ans. At the time that I suggested to Joseph Duffner or his partners that the land could be bought for $20,000 or $25,000 there was a proposition that if I would use my influence with the parties owning the land and assist them as far as I could honorably do to get the land from the owners for $25,000 or less, if possible, that they would pay me $200, and on the morning after returning from seeing the land I went to Buckhannon and did have a conversation with Mr. D. D. T. Farnsworth and other parties having the right to sell the land—I mean the landholders themselves. I used my influence with the landholders to let Duffners have the land at $20,000, and I understood at that time and place that the trade was made for $20,000, at which time and place the parties repaired to an upper room, I think in D. D. T. Farnsworth's store, as I understood, to draw the writings, at which time and place D. D. T. Farnsworth commenced writing the contract.

Ques. Did you receive any pay or any part of the $200 which they proposed to pay you to aid them in getting the land at $20,000 or $25,000; and, if so, from whom did you receive the same and the amount, and when?

Ans. I did receive a check of $10.00 from Joseph Duffner,
454 and a letter also from him stating that he would soon be at Buckhannon, when he would arrange or settle the matter.

FEBRUARY 23D, 1887.

Same continued.

Present: John Brannon, attorney for defendants who have answered and H. C. Coon.

Present: M. T. Frame, attorney for plaintiff.

Ques. State whether in your conversations with the said Joseph Duffner, in going up in April, 1883, to see the land, or in returning therefrom, or at any time before the said Duffner left Buckhannon to return to Cleveland, there was any conversation between you about investigation of the title of said land; if so, state all about it and what was said, and by whom.

Ans. Some time during the time I was with Joseph Duffner he asked me something in reference to the title of the 40,000 acres Wilson or Morton land. I told him the safer plan for him would be to have a lawyer to examine the title before paying his money in case he should purchase it. Well, I think he remarked that he

was a stranger to the lawyers in this section of country. I then remarked that I supposed there would be no impropriety in him selecting a lawyer of his own choice elsewhere. There was some inquiry how it occurred that there was but 20,000 acres of land charged on the assessor's books, while the survey called for 40,000 acres. I then remarked to him that the owners of said survey had made application to the county court of Upshur county to be released from paying taxes on 20,000 acres of said survey on account of prior claims and persons having had possession of a part of said 40,000 acres for more than 10 years. I further remarked to him that if he could purchase the land for $20,000 that I thought the land was cheap.

455 Ques. If the said Duffner said anything about getting a lawyer to investigate the title at the time the conversation referred to by you or at any other time before he left for Cleveland in April, as to who he would get, state what he said about it.

Ans. My recollection is that he said he thought he would bring one from home, as I thought, meaning Cleveland, Ohio, but I do not think he named any one.

Ques. You stated on yesterday that you was in an upper room over the store of D. D. T. Farnsworth, where the writings were being done about this land between Duffners and the owners or committee. Now state if during your stay there there was anything said by the parties there as to what character of deed would be made and what provisions for settlers; and, if so, what was said in this regard, and by whom.

Objected to for the reason that the contract as well as the deed speak for themselves.

The defendants claim the right to an answer, because by the theory of the bill relief is prayed for upon the grounds of fraud preceding the execution of the papers referred to.

Ans. It is pretty hard to remember all that occurred upon that occasion. I remember that Joseph Duffner insisted for a general warrantee deed, but D. D. T. Farnsworth, and I think other parties then present, said that they would not make a general warrantee deed, as they had only a tax title, and that they would convey only such title as they had obtained, reserving to the settlers on the land the right that they claimed to have, and that D. D. T. Farns-

456 worth said that before he would make a deed for his interest in the land that would cause the settlers to be sued that he would lose the money he had already paid, and after some wrangle between the parties it was agreed, as I understood, that the title conveyed should be special warrantee, and that the sum agreed upon should be $15,000 instead of $20,000, and then D. D. T. Farnsworth proceeded to complete the writing, and I left the room before they were signed.

Ques. State whether you have ever filled any offices in Upshur county; if so, state what.

Ans. I served years as magistrate, and after that I served 5 years as assessor in the county. I served as county surveyor for two terms, and deputy surveyor in the terms of other surveyors.

Ques. Do you know the calls of lot No. 1 of a connection of surveys called the Dr. Thos. Bond surveys on the Buckhannon River waters? And, if so, state as near as you can the calls of said lot.

Ans. I believe I do. As well as I recollect, said lot calls to begin about a half a mile above the first left-hand fork of said river, and beginning at a sugar tree represented to stand 800 poles west from said river.

Ques. Is there any fork of said river north of what is now known as the forks of said river?

Ans. I have never known any stream called a fork below or north of the main forks, near Isaac W. Simons'.

Ques. State, if you know, from the calls of the other lots of the said Bond surveys, whether they would, consequentially, lay north or south of said beginning corner.

Ans. They would be south—that is, the land or body of the survey would be south.

457 Ques. Look at the map filed by John R. Boggess and signed by him, accompanying his depositions, and look at the location thereon of the Standish Ford 45 surveys and state that if the location of the same is correct with reference to the actual location of the same on the ground and with reference to the location of the same in respect to the forks of the said river, then, putting the beginning of the Bond surveys with reference to the call of the fork aforesaid, indicate by some reference to a line on said map about where the beginning of the said Bond survey would be.

Ans. From the northwestern corner of the said Standish Ford surveys, as laid down on said map, and about 80 poles south therefrom, thence from the same west 800 poles to a point on the said map would be the beginning of the said Dr. Bond survey No. 1.

Ques. If you have ever made any searches to discover lines or corners to ascertain on the ground the identity and location of the said Dr. Thos. Bond surveys, then state what you may know or may have discovered about them.

Ans. I have made searches for lines and corners in order to locate the Dr. Thos. Bond surveys, spending quite a number of days, but have never been able to find either line or corners which would lead to the identity or location of said surveys, according to my judgment. I was first called upon by Wm. T. Bond to make a search about the year 1849 or 1850; some time after that was called upon by Thos. E. Bond. I made searches and done a considerable

458 amount of surveying at the instance of said Bond's. I meandered Buckhannon river from the mouth of Ten Mile, which is about some 5 or 6 miles below the forks of Buckhannon river. I continued the said meanderings to the three forks of Buckhannon, which is about 3 miles above the forks referred to. At another time I ran a line a half a mile up said river from the mouth of Ten Mile, then west 800 poles in search of the said sugar; I did not find any marks or lines. At another time I began at the mouth of Grassy Run, probably two and one-half or 3 miles below the mouth of Ten Mile, ran up said river 160 poles, then west 800 poles from said river in search of the sugar; I found neither marks or

lines. I done work amounting to about $500 and never received 5 cts. for it. I have made other searches not herein named.

Ques. State, to the best of your knowledge and to your information, the probable quantity of land within the boundaries not occupied by actual settlers within the said 40,000 acre tract.

Ans. Probably about 18,000 or 20,000 acres; maybe more or maybe less.

Ques. With a title to all the land not occupied by actual settlers for 10 years, free from question, inside of said survey of 40,000 acres, state what the same would have been reasonably worth per acre in April, 1883.

Question objected to.

Ans. From $2.00 to $3.00 per acre, on an average.

Ques. State, if you know, of a Mr. Fish being in the clerk's office of the county court of Upshur county; and, if so, state whether you was present when he was in said office, and state, if you know, when it was and what he was doing.

459 Ans. I know of a man called Fish being in the clerk's office of the county court of Upshur county. I was present while he was there, or at least a part of the time. I understood he was there examining the title to the 40,000-acre survey. It was in the year 1883, in July or August. Joseph Duffner was present.

Ques. State, if you know, what records, if any, the said Fish examined or anything he may have said in respect to the same.

Ans. He examined some of the books in which some of the deeds were recorded in said office. I think he examined Deed Book "K" and probably others. He also examined the assessor's land books and the book or books in which the delinquency of the Morton tract of land was recorded; also the return of sale by the sheriff and the surveyor's report and the deed made upon said report by the clerk of said county court to the purchasers of said land. He examined some law books, and, after examining the books and statutes, &c., he stated that so far as he could see or learn it was all right, and told Mr. Duffner that he could make his payment on the land.

Ques. After Fish made the remarks you have stated, that it was all right, &c., state, if you recollect, whether there was any remarks made by the owners who may then have been present; and, if so, what was said and by whom.

Ans. I think that Henry F. Westfall made the remark or asked the question if he was fully satisfied with the examination, and, if he was not, to continue the examination until he was satisfied, for some persons had reported that their title was only a "wild-

460 cat title," and that he wanted no trouble hereafter about the matter, and I am inclined to believe that D. D. T. Farnsworth said or sanctioned about the same thing.

Ques. You have said here, though not put down, that you went to the depot in company with Mr. Fish and Joseph Duffner. If anything was said by either of them on that occasion about the examination which had been made by Mr. Fish state what it was and by whom.

Ans. My recollection is that Mr. Fish said he believed that he would go back to the clerk's office and get a brief of title from said office, which he believed would be an advantage to Mr. Duffner in making sale of said land if he should wish to sell it; that is the sum and substance of all that was said. There might have been more said.

461 Cross-examination:

Ques. by M. T. Frame, att'y for pl't'ff. What part, in your opinion, would remain after deducting from the 40,000 acres, Wilson survey, the land owned and taxed to others claiming under junior grants and other titles within the boundaries of said survey in 1883?

Ans. I would not be able to answer, as a portion of this land may be taxed in other counties.

Ques. Don't you think that it is exceedingly doubtful if there was any part of the Wilson 40,000-acre survey in 1883 upon which some person other than those claiming under Wilson was not paying taxes under some claim to the land?

Ans. My impression is that the greater portion of said survey or the boundary embraced in said survey were charged to other persons in 1883.

Ques. You were of that same opinion in 1883, were you not?

Ans. In 1883 these maps that you have looked at were not made, and I therefore did not know as much as I do now about it.

Ques. Do you not know that the owners of this tract of land, or a part of them, in 1883 and prior thereto, knew that their title was regarded as a "wild-cat" title?

Ans. I always heard the parties owning the land express themselves as believing that the title was good, notwithstanding it had been talked by others as doubtful.

Ques. Do you know that the "talk by others" about the title as doubtful was brought to the knowledge of the owners or some of them?

Ans. I cannot speak positive as to that, but would presume that at least some of them had heard such talk.

462 Ques. Don't you know from conversations had with them that they had?

Ans. While in conversation with the parties they, as above stated, always said that they believed their title to be good.

Question repeated.

—. There is a portion of these owners that I never had any conversation with. In reference to the title of the land, from my knowledge from conversation with a portion of them, I should be led to believe that they had.

Ques. Did you never hear Jackman Cooper and, perhaps, others of the company, Henry F. Westfall and D. D. T. Farnsworth, say that they had heard that their title was regarded as a wild-cat title?

Ans. I never heard Jackman Cooper, to my knowledge, say anything about a wild-cat title. I have heard Henry F. Westfall and D. D. T. Farnsworth say that others, or other persons, said that they had a "wild-cat title."

Ques. Then it is a fact within your knowledge that at least two of the members had knowledge of the rumor that their title was bad?

Ans. While that is a fact, they always at the same time appeared to have confidence in their title.

Ques. Don't you know that, prior to 1883, other purchasers had declined to consummate a purchase of this land on account of the worthlessness of the title?

Ans. I know that prior to 1883 other persons went upon the land, as they said, with a view of buying the same, but went away without purchasing, and I cannot say whether it was for the rumor as to question of title or other reasons.

463 Ques. Did you know a man by the name of Welch, who was here on two occasions with a view of purchasing that land from the company?

Ans. I did.

Ques. Don't you know that he declined to make the purchase because of an adverse opinion on the title made by Major Totten, of Buckhannon?

Ans. I do not know of my own knowledge. I have heard so.

Ques. Did you ever hear so from either member of the company?

Ans. I do not recollect from whom I heard it, whether from Totten or outsiders or whom.

Ques. Is Totten a lawyer of the Buckhannon bar?

Ans. He is.

Ques. Has he not also quite an extensive knowledge of surveys and titles, of and concerning the numerous titles within the region of the Wilson tract of 40,000 acres?

Ans. I believe he has.

Ques. Who was the other purchaser you referred to as having been shown on the land and who declined to purchase?

Ans. I cannot give his name. I think the two were together, and perhaps only one.

Ques. Did you never hear D. D. T. Farnsworth complaining about the adverse opinion given by Totten as to this title?

Ans. Not that I recollect of.

Ques. Do you know anything about the Davenport 30,000 acres?

Ans. Yes; I do.

464 Ques. Do you know anything about the Frederick Fally 30,000 acres?

Ans. Yes; I do.

Ques. And the David Lynn 35,062 acres?

Ans. I know nothing as to that survey.

Ques. And the Young and Steward 5,000 acres, being a block in a series of surveys?

Ans. I know nothing in reference to said surveys.

Ques. Who was present at the time Duffner and others were making the deal for the land in the upstairs of Farnsworth's store in Buckhannon other than the committee?

Ans. This man Thomas was there. I do not know if he was one of the committee or not, and I think probably Mr. Duffner's brother—do not know his name—and if any others I do not know of them.

Ques. Isn't it a fact that you merely called to see some one there, and was only in the room a few moments?

Ans. I went up to the room for the purpose to see whether or not the trade was fully made between the land claimants and Duffners. I was there but a short time; perhaps one-half hour, more or less.

Ques. Now, may you not have been mistaken and confounded your presence with the parties down-stairs and before they had gone upstairs, and that the truth is that you only came to the door of the upstairs room and spoke to some one in the room?

Ans. I am not mistaken, and the truth is that I was in the upper room.

465 Ques. Have you not been talking with various parties touching the facts and circumstances of this transaction for nearly 4 years, and has not that tended to confuse you as to when and where many of the things were done and said?

Ans. Probably I may have talked with some of the parties about this cause in the past 4 years. As to having been confused in my said conversation as to the time and place, I don't think I have been, yet such might be the fact, for no man is perfect.

Ques. Did you not say on yesterday, when attempting to detail the conversation between Simons and Duffner, that "I think there was something said, but it is hard to get at it. There has been so much said about this since these suits, it is hard to dissect what was said at the time from what was said some place else"?

Ans. The substance of the remarks were made in relation to the conversations at Simons'; I had been there twice with Mr. Duffner. It is hard to recollect and separate between the times when the conversations occurred at Simons'.

Ques. The second time you and Duffner were at Simons' was after Duffner's purchase, was it not?

Ans. It was.

And further this deponent sayeth not.

WATSON WESTFALL.

* * * * * * *

FEBRUARY 24TH, 1887.

Present: John Brannon, attorney for defendants who have answered and H. C. Coon.

Present: M. T. Frame, attorney for p't'ff.

L. S. S. FARNSWORTH, a witness of lawful age, being introduced by the defendants and being duly sworn, deposeth and sayeth as follows:

466 Ques. State your age, residence, and where you have resided, and occupation.

Ans. My age is 56. I reside in the town of Buckhannon, Upshur county, West Va.; was born and raised here and have resided here continuously for 10 years. My occupation is artist and dentist.

Ques. Are you one of the parties to this suit?

Ans. I am.

Ques. Did you ever see a gentleman named Fish, from Cleveland? If so, state where you saw him and what he was engaged in when you saw him and with whom.

Ans. I went in the clerk's office of the county court of Upshur county, where they were examining the records of the 40,000-acre Wilson survey. I there saw Henry F. Westfall and, I think, Phillip Thomas, and I know there were others. I saw Mr. Fish, the lawyer, as I was told, examining the records. Mr. Duffner came in the room while I was in there.

Ques. Now, then, state, if you can, what was stated, if anything, by Mr. Fish there in respect to what he had examined, and state, as near as you can, all that you may have heard remarked by any of the persons there in respect to the matter under investigation.

Ans. Mr. Fish made a remark that this was only a copy of the original deed certified to by Bull, and that he would have to see something further. Henry F. Westfall said, You can see any and all of the records, they are at your service; and said, "Some people call a tax title a wild-cat title, and we wish you to search the records until you are satisfied, for we want no after-claps." Fish then called for the assessor's books for a certain year, to which I did not pay
467 attention, and, after examining some time, he made this remark, "It is all right," or all satisfactory, or something like that. I do not know if anything transpired at that time, but I think he called for the deed from the company. I know he was reading it, and when he came to the $15,000 he looked out toward the door. I think Mr. Duffner was standing just outside the door, and he, Fish, says, "How is this? This deed says $15,000, and I thought or you told me $20,000." Mr. Joseph Duffner replied, "That's all right; I understand that." Then Fish says, "I thought I would call your attention to it." I did not notice anything else particularly till Mr. Valentine Strader stepped near the door, on the outside, Mr. Duffner being inside the room, who was just starting, and Valentine Strader said to Mr. Duffner, "Well, how are you getting along with your examination?" Duffner said, "We are done" or "through." Mr. Strader says, "Well, how did you find it; about as we reported it?" The reply was, "Yes; if anything a little better, and I am now ready to receive the deed and hand over the checks." I then went out.

Ques. State, if you can, the day of the week when this occurred.

Ans. I cannot be positive. I thought it was on Saturday. I remember they were aiming to get off that evening on the train.

Cross-examination:

Ques. by M. T. Frame, att'y for p't'ff. Is not your mind very considerably confused about the occurrences in connection with the transaction you have related from the long lapse of time?

Ans. Not one bit upon the points mentioned, which I am
468 positive about.

Ques. State what part you took in working up this sale to Duffner.

Ans. I don't remember of speaking to him before the sale.

Ques. Why did you not, being interested as an owner?

Ans. At the time he came I was engaged in other business, and heard that some other parties came with him to show him the land. I saw the party start away from the hotel, and knew if anything further was done I would be notified and consulted.

Ques. Who was designated by the company to make the sale?

Ans. No parties whatever.

Ques. Was Valentine Strader mistaken when he stated that Jackman Cooper and Farnsworth had been designated by the company at a meeting to make sale of this land?

Ans. He was, if he so stated.

Ques. Do you deny that the company had designated D. D. T. Farnsworth and Jackman Cooper as a committee to sell this land, who, having associated with them Phillip Thomson, acted for and and on behalf of the company as a committee in the sale to Duffner?

Ans. I do emphatically deny that they had any authority to make a sale. They could solicit an offer and report to the company of the same, as to what they could do or get, and the company could either accept or reject, and many of them did object to taking $15,000 for a long while. Henry F. Westfall made the strongest objection.

Ques. Didn't the company appoint the three men last mentioned in the preceding question as a committee to hunt up purchasers and to show this land?

469 Ans. I cannot say they were requested to hunt up purchasers or to show the land, but to confer with persons who might come here to purchase land and to make it known to them that this tract was for sale.

Ques. Have you not since that sale transferred your entire estate?

Ans. I don't think I have sold 10 cts. worth; if I have I don't know it.

Ques. What was the first amount reported to you by Farnsworth, Cooper, and Thomas or either of them as the amount that Duffner was willing to pay for the land?

Ans. I cannot tell whether they or either of them reported it to me, but my impression was they (Duffners) would take it at our price of $20,000.

Ques. Didn't these three men last mentioned change that price to $15,000 without consulting the company before the papers were signed for the sale of the land?

Ans. They reported that they could not get $15,000 and wanted to know if we would accept it.

Ques. Did you not know that prior to the execution of the deed to Duffner other purchasers had declined to accept the company's deed for the land on account of the worthlessness of the title?

Ans. I don't remember of any.

Ques. Don't you remember that Welsh declined to purchase this land from the company on account of an adverse opinion of Major Totten?

Ans. I don't remember the man's name; I only remember of a

man who made me an offer in writing, which I submitted to the company and they declined. I did hear that Totten examined into the title, but I do not know to what effect. I heard some
470 persons say that some points in Totten's report would be against the quantity, but some said it would be in favor of it; some said there would be 25,000 acres and others said 27,000 acres uncovered by prior patents or lapse.

Ques. Don't you know that Totten's report was adverse to the validity of the company's title—by reason of that report Welsh refused to consummate the trade?

Ans. I never heard that.

And further deponent sayeth not.

L. S. S. FARNSWORTH.

* * * * * * *

D. D. T. FARNSWORTH, being introduced by the defendants and being duly sworn, deposeth and sayeth as follows:

Ques. Are you the some D. D. T. Farnsworth who is a party to this suit?

Ans. I am.

Ques. State your residence, age, and occupation.

Ans. My residence is Buckhannon, Upshur county, West Virginia, and have been, more or less of the time, for 60 years. My age is 67 years past; my occupation is farming and milling.

Ques. State if you can recall — your recollection a visit of Joseph Duffner, Chas. Duffner, & Mathew Duffner with a man named Woods to Buckhannon to look at the land in question; and, if so, state when and where you met with the first.

Ans. I heard that these parties named were at the Valley House, in Buckhannon, and about the 19 or 20th of April, 1883, but had no acquaintance with them—that is, with Jos. Duffner, Chas. Duffner, & Mathew Duffner—until they were returned from looking at the land known as the 40,000 acres Wilson land. They
471 started on Saturday morning to look at the land and returned to the Valley House, in Buckhannon, if I mistake not, on Tuesday evening following.

Ques. Are we to understand from your expression above that you had no talk or conversation with the said Duffners or either of them from the Saturday of their arrival in Buckhannon to look at the land or during their stay, before they went to look at the land, or at any time at or before their departure from Buckannon to look at the land?

Ans. None whatever until they returned from looking at the land. I never knew any of these parties, Joseph Duffner, his brother Charles or his son Mathew, or this man Woods, before they came to Buckhannon; never had any correspondence with them; did not know they were coming; had nothing to do with sending them to see the land nor employing Watson Westfall or anybody else to go with them; was not at the Valley House the evening or night before this Saturday that they went to look at the land. I came along from my home on the island that Saturday morning on my way up-

town. I saw a party in front of the Valley House that was getting up some kind of vehical or carriage, and overheard some of them say that they were going up to look at this land, and were disputing about the best way of going, and I stopped a few minutes on the pavement and then came on uptown. I was not in the Valley House at that time, and, as I have said, had nothing to do with any arrangement for the parties to go to see the land.

Ques. Did you, before they went to look at the land, introduce Watson Westfall, in the Valley House or elsewhere, to the said
472 Duffners or to either of them?

Ans. I did not, for I was not acquainted with them myself.

Ques. Did you, before they went to look at the land, state in the hearing of Charles Duffner or to either of them that if they would get Watson Westfall he was the best man to go with them to look at the land, or words to that effect?

Ans. I did not have any such conversation with them, and never made any suggestion to them as to anybody. I was not with Watson Westfall.

Ques. Did you, at any time before they left the town of Buckhannon to look at the land, go with the said Woods to see the said Joseph Duffner or any of them when Watson Westfall came in and you remarked he was a surveyor and could show the lines, and then they, the said Duffners, yourself, and the said Watson Westfall arranged to go with Westfall the "next morning" or for any other time to see the land?

Ans. No, sir; I was not in the company of Woods, Watson Westfall, or any of the Duffners the evening or night before they went to look at the land; never said to Woods nor either of the Duffners at that time or any other time that Watson Westfall was the best man to show them the land, nor no such conversation with regard to showing them the land.

Ques. If there are any depositions filed in the cause showing statements of facts to the contrary of your answers to the last four preceding questions, state whether they are true or false.

Question objected to.

Ans. There are filed in this cause depositions of Joseph
473 Duffner, Charles Duffner, and Mathew Duffner, taken in the city of Cleveland, that contradict what I have said in the foregoing questions, but they are wholly false.

Ques. Do you know a man named Wm. E. Ransom, living in the city of Cleveland?

Ans. I have but slight acquaintance with him.

Ques. State, if you can, when you first met with the said Ransom, and when; and, if you can indicate the time, state any facts you may know that enables you to fix the time of your first meeting with the said Ransom.

Ans. The first time I ever saw Mr. W. E. Ransom was in the latter part of September, 1883, in the city of Cleveland, in some office that he called his land office, in connection with two other individ-

uals. I think I was introduced to Ransom by Phillip Thomas. The reason I remember the time so well I went with Mr. Thomas from Buckhannon to Cleveland for the purpose of selling some land that he had and that I had for sale. Mr. Thomas told me he had got acquainted with these parties some time in July, at the time he returned with Mr. Fish and Mr. Jos. Duffner. Whilst I was in Cleveland at that time I met with Mr. Joseph Duffner. He asked me whether I had got a certified check on Henry Week's Bank for $2,800 for what he owed me for a note he had given me. I told him I had not. He said he had sent it by mail, and when I returned I would find it in the mail. When I did return I went to the office as soon as I returned, which was the 28th day of Sept., 1883, found the check as he had stated, and deposited it in the Buckhannon Bank the same day, and the bank books will show the same. This is the reason why I remember the time so well when I was in Cleveland with Phillip Thomas and saw for the first time this man Ransom.

474 Ques. Was you in the city of Cleveland with the said Philip Thomas at any time before the month of September, 1883?

Ans. I was not.

Ques. Then, if you had any conversation with the said Ransom in respect to the said 40,000-acre tract or the title, or expressed to him any opinions touching the same, state whether it was before or after the deed for the said 40,000 acres had been made to the Duffners and purchase-money paid by Joseph Duffner.

Ans. I think Mr. Ransom asked me something about the land that Joseph Duffner, his brother, and son had bought out here, but don't think there was anything said about the title, but he asked about the timber and the land generally; and this was long after the Duffners had bought the land—had their deed and paid for it—and there was no question with myself and Mr. Ransom as to the validity of title to this land.

Ques. In any conversation you may have had at the time you have stated, in September, 1883, or at any other time with said Ransom did you state to him that you was a man of high standing, was president of a bank, a prominent member of a church, or that you had been Governor of the State?

Ans. I have no recollection of any such conversation or language, but as to saying that I was a man of high standing or good standing I said no such thing positively.

Ques. Did you ever ask Charles Duffner who was the mayor of Cleveland, and if he was a good man, and when he answered that he was a good man did you reply, "I am just such a man as he is?"

475 Ans. I never asked him such a question, nor never told him what kind of a man I was, and he knows I never did.

Ques. Did you never say to the said Chas. Duffner that "you was an old man, one foot in the grave & the other one on the brink, and that you had enough to live on and could only leave to your

children a good name," and then after this statement drew up the contract, and Joseph Duffner paid the $100?

Ans. I never said so to Chas. Duffner nor anybody else such language nor anything that could righteously be construed to have such a meaning at the time of drawing up the paper-writing signed by the three Duffners nor any other time.

Ques. Did you ever say to Chas. Duffner that you was a man of high standing, was president of a bank, a member of a church, and had been Governor of the State?

Ans. I do not remember of saying anything of the kind to Chas. Duffner, but certainly did not as to being a man of high standing.

Ques. Do you know a man named Baldwin, who testified in this cause by his deposition taken in the city of Cleveland recently?

Ans. I have a slight acquaintance with him.

Ques. State when & where you first met him or become acquainted with him.

Ans. I am quite sure that I met with the said Baldwin and became acquainted with him—was in the town of Buckhannon—in August, 1883. I was introduced to him by Joseph Duffner as he was on his way with his son-in-law to go upon the land. At the same time Mr. Duffner told me privately that he had brought
476 this man, Baldwin, and was going to show him the land he had bought of the defendants, and he expected to sell him at least a half interest, if not the whole of it, for big figures; that he was going to make a big thing out of it; that he expected to get at least $40,000. I am not certain whether the $40,000 was for the half or the whole. I told him I hoped he would do well with it. This was said to me near the livery stable, when he was arranging to get some horses to go up and show him the land. This is the first time, to the best of my recollection, that I saw Mr. Baldwin.

Ques. State whether you ever saw or had any conversation, before the execution and delivery of the deed to the said Duffners for the 40,000 acres of land and before the said 40,000 acres of land was paid for, with the said Baldwin.

Ans. I never had.

Ques. Did you ever say to the said Baldwin that the title to the land in question was first class? If not, state any opinion you may have expressed to him.

Ans. I never did state to him that the title was first class or any language that could have been construed to have meant a first-class title. I think I said to Mr. Baldwin, at the time he was out here, in August, 1883, either before he went up to look at the land or on his return therefrom, for he asked me something in regard to the title, I told him that it was a tax title, and the deed from us to the Messrs. Duffner was not a warrantee deed, but was a tax title—the same title we had got from the State. I think he asked me what I thought of the title. I told him, as far as I knew, I had myself always regarded it to be a good tax title. I think I also told
477 him that Mr. Joseph Duffner and his attorney, Mr. Fish, had

been here at the time he received the deed from us and gave the records and deeds and the sale of the land for non-payment of taxes a thorough examination, and that they had pronounced that the tax title was all right. This is about the conversation I had with him concerning the land and its title.

Ques. Now state all you may know about the transactions you or others in your presence may have had with this said Joseph Duffner or either of them in the month of April, 1883, from the time you first commenced dealing or negotiating with them or either of them about this land in question up to their departure from the town of Buckhannon to return home.

Ques. On the evening of the day they returned from looking at this land—I mean the Duffners—some one came to me and said that the parties that had been looking at this land wanted to see me, and, I think, Cooper and H. F. Westfall, at the Valley House in Buckhannon. I went down, and I think Henry F. Westfall and Jackman Cooper was along, and there met for the first time Joseph Duffner, Charles & Mathew Duffner, who said they had been to look at this land and was very much pleased with the timber and land, etc. There was something said during the conversation about buying the land, and we spent considerable time there talking about the land and other things. I don't remember that there was any proposition as regards the sale made by either of the parties on that evening. I think there was something said about seeing us next morning about it. The next morning, which was the 24th day of April, 1883, they, Duffners, came up to my son's store and
478 said to me that they had understood that I and some one or two others had the selling of this land, and, as they had been to see it and was pleased with it, they wanted to see whether they could buy it. I said to them, as the store was generally crowded, persons coming in and out, that perhaps we had better go upstairs into a tailor shop, where we could talk about this matter without being interrupted by persons coming in and out. We did so. Jackman Cooper, Phillip Thomas, the three Duffners, and myself were all together. We then commenced talking about the selling of the land or their buying it. I asked the Duffners whether they had not come here to look at the land with a Mr. Woods and whether he didn't come to sell the land to them or expected to sell it to them, and, if so, I did not want to interfere with Mr. Woods or any of their arrangements with the matter. Joseph Duffner said that they had come with Mr. Woods and had expected to buy the land of Woods, but he was drunk, and he didn't want anything more to do with him, and if we would not sell them the land that they would go home without it. I then said that the owners of the land wanted to sell the land and had appointed myself, Jackman Cooper, and Watson Westfall, and, I think, Hennings, of Pennsylvania, to act as a committee, but that Watson Westfall had sold out his interest some time ago and was taking no part as one of the committee now. Phillip Thomas said he had been spoken to by the Hennings, his old neighbors, to represent them upon a committee in looking after some one who might want to purchase the land. The Hen-

nings owned 19-fortieths of the 40,000 acres. Upon Thomas' representation Cooper and myself admitted him to act as one of
479 the committee. We explained to the Messrs. Duffners at that time that this committee, so called, had no power of attorney nor legal authority to sell the land, but were chosen because of our location here to try and ascertain who might want the land and the best offers we might get for it and report to the company or owners of the land as to any offer that might be made for same for their ratification or rejection. We then asked them $40,000 for the tract. Joseph Duffner spoke up and says, "Why have you not offered to sell the land for $20,000? We learned that you had." I told them we had offered it at one time for $20,000, but were now under no obligation to take that sum. They then said they would not give any more than what we had offered to sell it. Then Mr. Cooper, Thomas, and myself had a short consultation about it and concluded that as we had offered it at that at one time that we would let them have it for $20,000, provided the owners would ratify it. We so said to the Duffners. They said then that they would give $20,000 for the land. I was requested to draw up an instrument of writing, which I did, and after writing *to* the consideration of $20,000 for the land I says to them, "Gentlemen, I suppose you understand that this is to be a cash sale." Mr. Joseph Duffner says, "No, the understanding was with Woods *and as* that we would only be required to pay half down, and we don't propose to pay any more than half down." I then said to them that it was of no use to write any further, that I was confident the owners would never make a deed unless the money was all paid down, for that was the instructions to us, the committee, that all the money was to be paid
480 down whenever the land was sold. That created quite a confusion. The three Duffners went back some distance in the room, which was very long, and commenced talking together in German. I didn't understand a word they said. Finally, Mr. Thomas went to them. I am not certain but what they called for him. They had talked for some time together. I think, before they went out to talk together, Mr. Thomas said to them that he had been at great expense in going backwards and forwards to see the Hennings of Pa., and that he didn't propose to make any effort to get a deed for that small amount, or something like that, unless he was paid pretty well for it, and says, Here is Farnsworth and Cooper that ought to have something if they assist in getting a deed. The Duffners then says to Thomas that they would give each one $500 to secure a deed. This was their own proposition. Thomas said that small amount would not compensate him; that he had spent more than that already. Cooper and myself did not ask them for anything. We had made no demand. They then had this conversation that I spoke of by themselves with Thomas, and when they returned to where I was sitting the Duffners then said to me that we have concluded to give $15,000 down or at the making of the deed for the land. I then had some conversation with Cooper and Thomas, and we finally concluded to put $15,000 into this instrument of writing, cash down, so that was agreed upon by both parties,

and I just took my pen and drew it through the words "twenty thousand" and wrote above it $15,000. The copy that I have, being the original, has the words "twenty thousand" in it and the pen drawn through it. The copy that Mr. Duffner has has not. So then I continued to finish the paper-writing, and Joseph Duffner, Chas. Duffner, and Mathew Duffner signed it. I told them that this
481 committee could not sign it because we had no legal authority to make a positive contract or sale, which they understood. The agreement was that if we procured a deed according to the provisions of that paper-writing, that then they would pay so much for the land, provided that after they had examined the records as to the title of this land and the tax sale that if they should find the title all satisfactory to them that they would take the land at the price agreed upon; but they said before finally taking the land that they wanted to have the title investigated by some good lawyer that they might choose, and thought, perhaps, they would bring one with them; so that was agreed upon and understood by both parties that they were not to take the land and receive a deed and finally pay for it without such examination to their satisfaction. We asked them during this transaction to make an advance payment on so large a transaction, that the owners might require a considerable payment made on it. Joseph Duffner said they had but little money with them, but that he would pay $100, and he did so, with the promise that he would send $2,000 to *the* Buckhannon against the first of May; and he did send the $2,000 to this bank to me. I think I got it the 4th day of May. I think it was dated on the 2nd. During this transaction upstairs and after the conversation that the Duffners had in German and with Mr. Thomas, about the time I was closing the writing or a little before, perhaps, Mr. Thomas said to me that the Messrs. Duffner had agreed to give him $6,500 if he would procure a deed for this land such as they would accept after they had made the investigation as to the title, upon the fur-
482 ther condition that if he failed to get such deed he was to have nothing; so, when the writing was all done and signed by the three Messsrs. Duffner, I then said to the Duffners: Mr. Thomas tells me that you agreed to give him the above amount named upon the above conditions. They said, Yes, we did—Mr. Joseph Duffner being the spokesman. That is the first time I knew anything about their proposition to give Thomas $6,500 to procure a deed. When Mr. Thomas told me of their proposition to give him this amount he said he would need my assistance in getting that deed, and if I would assist him in getting the deed, according to this agreement, that he would give me one-half, providing we got a deed that they would accept, and if we failed to get a deed I was to charge nothing. I told him I would accept the proposition. I then asked Joseph Duffner and the other two Duffners whether they had made such a proposition to Mr. Thomas as that just named; Joseph Duffner said they had. I then told them about what Mr. Thomas had told me about giving me one-half for getting the deed as named. They said that was all right, Joseph Duffner being the spokesman. I asked them if they had any objection to submitting it to writing.

They said they had not; so I drew up a paper-writing, which they all three signed, which agreed to give to Thomas and myself the $6,500 upon the above conditions. This paper was destroyed, as I will hereafter explain in this deposition in connection with the circumstances which occasioned its destruction. So far as I now remember this concluded the transaction then in respect to the land.

Ques. If there was anything said in the room upstairs in
483 respect to the kind of deed that was to be made or the covenants of the same, state what it was and by whom.

Objected to.

Ans. There was. I forgot to mention it. We were to make him the same kind of deed as to title that we had got from the State, but it was to be provided in that deed that none of the settlers that were living within the boundary of this 40,000 acres were not to be disturbed by law as to the boundary of their claims held peaceably for 10 years, and that the deed was to provide for not less than 20,000 acres not occupied or held as afore stated by actual settlers. This was the only guarantee we gave them, and if it should prove that there should fall short of 20,000 acres that each person conveying the said land should be bound for themselves and not for another to make up any deficiency that might be found, if any, in the quantity of land not so occupied by the actual settlers, in proportion to the amount of money that each one of the owners would receive for the respective shares that might be conveyed by them. There was no covenants of general warranty to be given in the deed to be made; if any, it was only to be a special warranty. That was agreed upon and understood by Joseph Duffner, Chas. Duffner, and Mathew Duffner, and the committee. There was something said about a general warranty deed. Joseph Duffner, Chas. Duffner, & Mathew Duffner asked if we would not make such a deed, and they wanted such a deed with covenants of general warranty; but we told them positively that such a deed would not be made. During the transaction in the upstairs room I told the Messrs. Duffner that I would
never sign a deed without making provision in that deed
484 that the actual settlers within the boundary of that land should not be disturbed by law; that I would lose what money I had in it before I would do so.

FEBRUARY 25TH, 1887.

Present: John Brannon, attorney for defendants who have answered and H. C. Coon.

Present: M. T. Frame, attorney for plaintiff.

D. D. T. FARNSWORTH—continued:

Ques. Did you ever have any conversation with Joseph Duffner, after you first saw him as stated, in which you stated to him that you had been a senator and Governor for a short time and had a good deal of stock in a little railroad from Weston, and that they would have to do with old residents here and not agents, and that the title was good; all other lands you held was by good titles, and

that you would have nothing to do with lands unless the title was good? If so, state, if you can, all that may have occurred between you in respect to these statements, and when and where.

Ans. I had a conversation with Mr. Duffner after the first time I had seen him alluded to. After the transaction upstairs and after the business was all closed, having by this time become pretty well acquainted with Mr. Duffner, who seemed to be very genial and sociable, he invited me to take a walk and see the place—the town of Buckhannon. We did so; took a general stroll through the town and over to my mill, and during this walk and ramble through the town Mr. Joseph Duffner asked me a great many questions about the history of this State and this country, and in connection with giving him the history of the State I did, at the expense of what might be called innocent vanity, say to him that I had been the Governor a short time,
485 and in the conversation about our railroad here did say that I had some stock in it, and in passing by the Buckhannon Bank he was quite inquisitive about the bank, and I did tell him I was president of the bank, and in passing by the Baptist church he asked me what church that was. I told him it was our Baptist church. He says, "Are you a member of that church?" He then said he was a member of the Catholic Church. I told him I was a member of the Baptist Church. And also in the further history of the State I told him that I had been a senator of the State, all of which is true. I think that at some time during the transaction in regard to the land that I did remark to Mr. Duffner that a good many of the owners of this land were old settlers here. I particularly remarked as to Henry F. Westfall being an old citizen, and that we were not agents, which remark applied more to the committee than any one else. As to saying that the title was positively good, I have no recollection of saying so. I did say that "I thought it was good." I do not remember of any conversation as to titles of other lands that I held and that they were good, and that I dealt in no lands that the title was not good.

Ques. Did you ever say to the said Duffners or either of them in substance that this land had sold for $100,000 at one time? If so, state to whom of them you said anything in respect to the matter.

Ans. I said to Joseph Duffner, and I think also to his attorney, Mr. Fish, that this same tract of 40,000 acres had been sold in New York, I think, as well as I recollect, to a man by the name of A. Perry Bliven for $100,000 in current money of New York in hand paid, and the deed was here recorded, which deed Mr. Fish
485½ himself, in the presence of Mr. Duffner, saw and read, and as an evidence of the fact that it sold for $100,000 I introduce a copy of the deed, certified to by the clerk. See Exhibit "N. Y."

(The plaintiff objects to the filing of the Exhibit "N. Y." because it encumbers the record and is not germane to the controversy.)

486 This indenture, made the second day of April, in the year one thousand eight hundred and seventy-seven, between William H. Morton, of the city, county, and State of New York (unmar-

ried), party of the first part, and A. Perry Bliver, of the same place, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one hundred thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, delivered, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part and to his heirs and assigns forever all that certain tract of forty thousand acres of land lying in the county of Upshur and State of West Virginia, being the same tract of land granted to Thomas Wilson by Robert Brooke, Governor of Virginia, 30th December, 1795, formerly in Randolph county, by virtue of part of land treasury warrant 1010, dated 23d December, 1794, and survey locating the same made March 20th, 1795, lying on waters of Buckhannon river, adjoining lands of said Wilson, and bounded as follows: Beginning at two sugar trees, thence north 40 degrees east fifteen hundred and sixty poles (1,560) to a cherry tree, a corner of said Wilson's land, and with four of his lines north two thousand and eighty (2,080) poles to two sugar trees; thence north thirty degrees west six hundred and sixty poles to a maple tree; thence north sixty degrees east ten hundred and sixty (1,060) poles to a
487 chestnut oak & birch tree; thence north thirty degrees east nine hundred and twenty (920) poles to a maple tree; thence, leaving said lines, north eighty degrees west twenty-eight hundred and twenty poles (2,820) to a sugar tree and white-oak tree; thence with a straight line fifty-six hundred and eighty (5,680) poles to the beginning, being the same property conveyed to the party of the first part by George W. Howard by deed bearing date 1st July, 1873, and recorded in Upshur county, West Virginia, Deed Book "K," pages 174 & 175, subject, however, to the encumbrance now thereon—

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining and the reversion & reversions, remainder & remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, & demand whatsoever, as well in law as in equity, of the said party of the first part of, in, and to the same and every part & parcel thereof, with the appurtenances; to have & hold the above granted, bargained, and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his or their own proper use, benefit, & behoof forever; and the said William H. Morton, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that the said William H. Morton, at the time of the sealing & delivery of these presents, was lawfully seized in — of a good, absolute, and indefeasible estate of inheritance in fee simple of and in all and singular the

above granted and described premises, with the appurte-
488 nances thereto, and hath good right, full power, and lawful authority to grant, bargain, sell, and convey the same in manner aforesaid, and that the said party of the second part, his heirs and assigns, shall and may at all times hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above-granted premises and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the said party of the first part, his heirs or assigns, or of any other person or persons lawfully claiming or to claim the same, and that the same now are free, clear, discharged, and unencumbered of and from all *forever* and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what nature or kind soever; and also that the said party of the first part and his heirs and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title, or interest of, in, or to the hereinbefore granted premises by, from, under, or in trust for them or either of them shall & will, at any time or times hereafter, upon the reasonable request and at the proper costs & charges in the law of the said party of the second part, his heirs & assigns, make, do, and execute or cause to be made, done, and executed all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectual vesting and confirming the premises thereby granted or so intended to be in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns or his or their counsel learned in the law, shall be reasonably advised or required; and the said William H.
489 Morton, for himself, his heirs, the above described and hereby granted and released premises and every part and parcel thereof, with the appurtenances, unto the said party of the first part and his heirs and against all and every person & persons whomsoever lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

WM. H. MORTON. [SEAL.]

Sealed and delivered in the presence of—
J. C. LAURENCE.

STATE OF NEW YORK, }
City of New York, } *ss:*

On this eleventh day of April, in the year one thousand eight hundred and seventy-seven, before me, Joseph C. Lawrence, a notary public, commissioned & appointed by the Governor of the State of New York to take acknowledgements of deeds & other instruments of writing, certify that William H. Morton, whose name is signed to the within conveyance, bearing date the 2d April, 1877, personally appeared before me and here acknowledged the same to be his act and deed before me in the State and city aforesaid.

Given under my hand & official seal the day and year aforesaid.
[NOTARIAL SEAL.] JOS. C. LAWRENCE,
Notary Public, New York City & County.

STATE OF WEST VIRGINIA:

IN THE CLERK'S OFFICE OF UPSHUR
COUNTY COURT, *June 27th*, 1879.

490 Be it remembered that this deed, with the certificate thereto annexed, was this day presented in said office and duly admitted to record.

Teste: C. C. F. McWHORTER, *Clerk.*

WEST VIRGINIA, *County of Upshur*, } *ss:*

I, C. C. F. McWhorter, clerk of the county court of said county, do certify that the foregoing writing is a true copy from the records of my said office.

Given under my hand this 17th day of February, 1887.
C. C. F. McWHORTER, *Clerk.*

Endorsed as follows: Wm. H. Morton to A. Pary Bliven. Deed. Exhibit "N. Y." Clerk's fee for copy, 1.50, charged to Farnsworth & Co.

491 I also stated to Joseph Duffner and Fish that there had been a man here who said he was a lawyer from New York, who said his name was Johns. He came here to examine the records after the State had made Hennings and others a title to this land, to see if he could not find some flaw in the sale of this land by the State and of our title to the land. He did examine the records and sale of this land, and was here some three days, saying that he was authorized to bring suit against us if we would not let them have the land. I told him they could bring suit just as soon as they pleased—would rather he would bring suit—for we thought we had a good title, and that if he brought a suit and the suit should be decided in our favor it would be a good advertisement to any person that might want to buy the land. He then wanted to know what was the best we would do. I told him that if the parties he represented would give us $20,000 we would give them the title we had obtained. He said they would not do that. He then said that they would deed us one-half of the land if we would deed them the other half. I told them we would not do that, for we owned the whole of it. This man Johns examined the return made by the sheriff of the sale to see if it was all correct and according to law, and finally he left, and he manifested to me very plainly that he was per-
492 fectly disgusted and did not bring any suit. This is about as near as I can recollect of what I stated to Mr. Joseph Duffner and Mr. Fish of what occurred between myself and Mr. Johns, the New York lawyer.

Ques. State, if you know, when, after the conclusion of the nego-

tiations with the Duffners, they left the town of Buckhannon to return home, and with whom, if you know.

Ans. I don't know what day or what particular time they, the three Duffners, left Buckhannon on the first visit.

Ques. State when and where you met with Joseph Duffner after his first visit to Buckhannon on his way to see said land, and state the circumstances and cause of your seeing him.

Ans. The second time I saw Mr. Joseph Duffner was in Cleveland on the second day of June, 1883. The cause of my going there to see him was I had received several letters from Jos. Duffner. I think some of them were written by Mr. Fish. I think one was on the 11th of May, one on the 18th, and one on the 30th of May, 1883. In these letters Joseph Duffner wanted the owners of the land to make the deed to him alone. I had answered him by letter that we could not do that, because the agreement entered into here was that the deed should be made to Joseph Duffner, Charles Duffner, and Mathew Duffner. After so informing him by letter I received another letter from Joseph Duffner on the 30th of May, requiring or demanding of us, the owners, to make the deed to him, Joseph Duffner, alone, stating in one of these letters that he did not wish to deprive Charles Duffner and Mathew Duffner from anything that they had hoped for in the venture, alluding to the purchase of this land and the interest they had in it;
493 that he, Joseph Duffner, would have to furnish all the money.

These letters of Joseph Duffner's caused me to go at once to Cleveland. I arrived there on the 2d of June, 1883, and left there on the afternoon of the same day for home. I saw Mr. Joseph Duffner. He went with me to Mr. Fish, law office, his attorney. I there explained to both of them that we had no right to ignore his brother and son in making this deed, and talked over the matters connected with this transaction pretty generally. During this conversation Joseph Duffner said he had advanced $100 when in Buckhannon at the time this paper-writing was made on this land, and that he had sent me a check early in May for $2,000 to the Buckhannon Bank as a further payment on this land, according to agreement, and that he had no assurance, in case he should get no deed for this land, according to agreement, that this money he had advanced would be paid back to him. I then said to Jos. Duffner that if Mr. Thomas and myself failed to get the deed that they would accept after they had examined as to the title; that I would give him my word and honor that I would pay him that money back. Duffner said that he was satisfied with that proposition. Mr. Duffner submitted that to Mr. Fish, his attorney, who said he thought that ought to be satisfactory. Now, the three Messrs. Duffner, when in Buckhannon, at the time of the first transaction, had given to Phillip Thomas and myself their obligation for $6,500 upon conditions, as afore stated, that we would procure such deed as they would accept after investigating said title. I then said to Mr. Joseph Duffner that I had nothing to do with what he might agree to give to Mr. Thomas; and
494 now, as Mr. Duffner and Mr. Fish had concluded that the better way would be for Chas. and Mathew Duffner to make

a deed for their interest to Joseph Duffner, so that the deed made by the owners could be made to the three Duffners, according to the agreement, I then said to Joseph Duffner himself, apart from Mr. Fish, that if he would separate the obligation that he had bound himself to give to Mr. Thomas and myself and to give to Thomas such an instrument as he might choose for himself for his services in procuring a deed and give to me a note for value received of $3,250.00, conditioned that he would pay the same if we procured the deed, as before stated in the original agreement, to myself and Thomas, and I further said if he would do this I would give him an instrument of writing in which I would forfeit $3,250.00 if I failed to get the deed according to agreement. Mr. Joseph Duffner did give me such a note and did send by me his obligation for a like amount of $3,250 to Phillip Thomas, payable upon the conditions that a deed was procured as per agreement, and wished me to deliver the same to Mr. Thomas, which I did. I gave Mr. Jos. Duffner my indemnifying article that I would forfeit the said amount of $3,250.00 if the deed was not procured according to the agreement as aforesaid. Then the joint obligation of Jos. Duffner, Charles Duffner, and Mathew Duffner to Phillip Thomas and myself was destroyed. After Mr. Joseph Duffner and myself had signed these three papers alluded to at a desk on the opposite side of the room from where Mr. Fish was sitting or writing, Mr. Fish turned around and says to Jos. Duffner, "What is that you are doing or signing?" We then showed Mr. Fish these three different writings, one to Thomas, one to myself, and my guarantee to Duffner. Mr. Fish read all
495 three of the papers signed by Joseph Duffner and myself, and he said, "Well, Mr. Duffner, I see nothing wrong, and I regard them as all right." During my stay there, in Fish's office, Mr. Fish wrote a deed conveying the interest of Charles and Mathew Duffner in this land to Joseph Duffner. It, the deed, was then signed by Charles Duffner and Mathew Duffner, and acknowledged the same day, the 2nd of June, by them before Charles Fish, a notary public. That seemed to fix up the business satisfactory that I went to see about, and just before leaving the office Mr. Joseph Duffner said to me that he thought he would bring his lawyer, Mr. Fish, with him to Buckhannon when he would come to examine as to the title of this land; that he would like it examined by his own lawyer. I then said to Duffner and in presence of Fish that I hoped he would do so. I then said to Mr. Fish that I wanted him to come with Mr. Duffner and examine as to the title of this land, and insisted upon his doing so. He said he would try and do so, but was not certain he would come. I then took leave of Mr. Duffner and Mr. Fish, and took the train for home.

Ques. Now, state when you next met with Joseph Duffner and where.

Ans. I next met with Joseph Duffner and Charles Fish in the office of the county clerk of Upshur county on the 12th day of July, I think, 1883. On the same day I had met them at the depot, being informed that they would arrive at that time. Henry F. Westfall and Jackman Cooper was with me at the depot. We went from the

depot to the Valley House, and soon after to the office of the
496 clerk of the county court of Upshur county.

Ques. State for what purpose, if you know, you and they went to the said clerk's office, who was present, and all about the matter referred to, and state what was done and by whom.

Ans. We went to the clerk's office at the time stated for the purpose of examining the deeds and all the conveyances of this land and all the records and papers connected with the tax sale of this land, in order to ascertain the validity of the title and the sheriff's return of this sale and everything connected with the history of this land, title, and etc. There were present at that examination Joseph Duffner, his attorney, Mr. Fish; Henry F. Westfall, Jackman Cooper, Valentine Strader, Phillip Reger, Watson Westfall, Jasper N. Westfall, myself, and L. S. S. Farnsworth; a part of the time, about the winding up of the examination, the deputy clerk, W. G. S. Totten, and I think there were others in and out of the office; and in this examination Mr. Fish examined various record books and papers from Thursday until Saturday afternoon, making the best part of three days, and during this examination Mr. Fish examined Deed Book "K," which book has in it all the connection of deeds from Thos. Wilson down to Wm. H. Morton, and when he came to the Morton deed a man by the name of Frederick Bull, of New York, certified that the foregoing writing—that is, the deed—was a true copy of the original. When Mr. Fish read that deed he says, "See here, this only purports to be a copy." That created some commotion, especially with Fish. He then called for the assessor's land book, and said he wanted to see whether it was charged on the assessor's land book—whether this 40,000
497 acres was charged on the said books in the year 1876, the year it was returned delinquent and sold for non-payment of taxes, in the year 1877 — the name of any other person or persons than Wm. H. Morton. He examined the book and found that it was not charged in the name of any other person or persons. He then called for some of the statutes of West Virginia in regard to tax sales, &c. The statutes were furnished him, and I am quite sure that he examined the acts of 1872 & 1873, and after he examined that he said he found the laws of West Virginia with regard to tax sales about the same as the laws of the State of Ohio. Fish then said that it made no difference whether Wm. H. Morton had titles or not, as it was this Thomas Wilson land that was sold, and, not being on the books in any other name than Morton, this general examination, as I have stated, continued, as I have said, until the afternoon of Saturday, the third day, Mr. Fish said he had searched until he was satisfied that the title was all right. He then said to Joseph Duffner, "I find everything right, or I found nothing wrong in the title, and you can pay over your money and receive your deed." Joseph Duffner then pulled out a check on Henry Week's Bank of Cleveland of $12,900, which was the balance of the $15,000 that the land sold for. He handed the check over to me; I then delivered the deed and Mr. Fish read the deed, and when he came to that part of the deed that each owner of the land should, in case of any deficiency in quantity

of land as named in the deed—if it should be ascertained there was any deficiency it should be made up by each one, according or in proportion to the money each one had received for their re-
498 spective interests conveyed and not for another, he says, This is a very carefully written deed. We told them yes; that it was our intention that one should not be bound for another's interest or obligation, and this was understood; and when he came to the consideration for which the land sold, which was $15,000, he says, "See here, Mr. Duffner"—Mr. Duffner had just stepped out of the office door—and he says, "See here, Mr. Duffner, how is this? I thought you told me that it sold for $20,000." Mr. Joseph Duffner returned back into the office and says, "That's all right; $15,000 is what it sold for; we understand that." So he finished reading the deed, and said it was all right. I wish to state that immediately upon Mr. Fish's announcing that he was satisfied with the search he had made, and that the title was all right, Henry F. Westfall spoke up and said, "Here are all the books and papers and everything in this office pertaining to the title of this land, and if you are not perfectly satisfied with the title search until you are, for we want no afterclaps or trouble about this land hereafter." He further said, "Some people say that these tax titles are nothing but wild-cat titles, and if they were not perfectly satisfied not to take the land." I then said, "That is just what we want, for you to search the records until you are perfectly satisfied or not take the land."

Ques. State what day it was when the examination was concluded and the conversation last detailed occurred.

Ans. It was on Saturday, in the afternoon, on 14th July, 1882.

Ques. When could the check have been sent for collection by due course of mail from Buckhannon?

499 Ans. It could not have been sent before the next Monday, because the cars either did not come in or had gone out.

Ques. What did you do with the check, and when, &c.

Ans. On this same Saturday afternoon I deposited it in the Buckhannon Bank for collection, and Mr. Joseph Duffner went down to the bank with me and saw me deposit it.

Ques. Was there at that time telegraphic communication from Buckhannon with lines running in connection north, east, and west?

Ans. There was.

Ques. If the discovery that the paper purporting to be a deed to Morton was as recorded in fact only a copy, and that fact was not discovered by the said Fish until the morning of the Monday following the said Saturday, could the payment of the said check have been arrested by telegraphic communication, assuming the lines to be in operation?

Ans. It could have been arrested.

Ques. Could the said Fish, from points on his line of travel from Buckhannon thence to Cleveland, have arrested the payment of said check?

Ans. Yes; he could at Clarksburg, Wheeling, and perhaps other points.

Ques. Did you attend the trial of the action at law in the district court of the United States at Wheeling about this land-sale controversy?

Ans. Yes; I did.

Ques. State whether the said Fish to whom you have referred testified as a witness in that trial.

Ans. He did.

500 Ques. State what the said Fish stated as such witness in respect to any conversation you may have had with him in Cleveland before he came to Buckhannon to examine the title.

Ans. He said, among other things, that I had insisted on his coming with Joseph Duffner to examine as to the title of this land, and the honorable court will doubtless remember it.

Ques. State whether you knew that the paper referred to as the Morton deed recorded was only what certified to be a copy before Mr. Fish discovered it was a copy and made the remarks which you stated about it.

Ans. I have no recollection of ever seeing that deed before.

Ques. Had you ever made any examination of the assessor's books of 1876 or did you learn in any manner that said tract of land was not charged on the tax books to any person other than the said Morton for said year?

Ans. Yes; I had seen the assessor's books, and had seen that it was not charged in the name of any other person or persons than Wm. H. Morton.

Ques. The deed of yourself and others to the Duffners contains some provisions or statements about 20,000 acres, with further provisions binding the grantors therein to an obligation to refund in the event there should be a less quantity than 20,000 acres not occupied by actual settlers, &c. State whether there was any arrangement or understanding at or before the delivery of the said deed for the ascertainment of the quantity not so occupied; and, if so, state all about it.

Ans. Question objected to, as the contract was in writing, and I object to the method of argument.

501 Ans. There was such an understanding. On the 24th day of April, 1883, at the time of this first paper-writing, upstairs in the tailor shop, the Duffners were to ascertain by survey or by the calling of the settlers together and they bringing in their deeds and title papers as to the land that they might hold within the boundary of the said survey and ascertain as soon as possible how much land there would be in the boundary not occupied or held by actual settlers. I know I said to Mr. Joseph Duffner that if they did take the land finally that we wanted them to proceed at once without any delay to ascertain, by either or both of those modes, how much land there would be unoccupied, because there might be some settlers within the boundary whose claim of title might not be matured under the statute, and by any delay of not ascertaining these facts it might reduce the quantity not actually held at that time by the settlers. Joseph Duffner said they would do that.

Ques. Did you ever say to Mathew Duffner that the title to this land which you had purchased at a tax sale was "A No. 1," or words of that import, if you understand what "A No. 1" means?

Ans. I think I understand what "A No. 1" means. It means a perfect title. I never said so to Mathew Duffner or anybody else.

Ques. State, if you can, what amount of taxes you and your associate grantors to the Duffners paid on this tract of land.

Objected to as impertinent.

Ans. The first amount — which it was sold was $642.20, as well as I remember. We paid the taxes for 8 years, including the
502 year for which it was sold, and the gross amount paid, including the said purchase-money, was $3,150.67.

Ques. Was you present the other day when the deposition of Geo. M. Fleming was taken? And, if so, state what you can say in respect to the matter or transaction.

Ans. I was present. Some time after I returned from Cleveland on the business with Jos. Duffner and Mr. Fish I was expecting Mr. Duffner to come to Buckhannon, and he might or might not bring Mr. Fish with him, to examine as to the title of this land, and, as the understanding was that Mr. Duffner had the right to bring his own lawyer or choose any lawyer he pleased to examine as to the title to this land, I did, in company with Mr. Phillip Thomas, see Mr. Fleming—I think it was in the court-house yard, near the front steps, and not in his office—and say to him that I was looking for Mr. Duffner, and perhaps his lawyer with him, to come out to Buckhannon shortly to examine as to this land, and that Duffner might not bring his lawyer with him, and in that event he might want to get a lawyer here, and we was thinking that we might recommend him, as we knew he was competent to make a thorough investigation of the title. Mr. Thomas nor myself did not propose to employ Mr. Fleming. It was only that we might recommend him to Mr. Duffner. We did not request him, as he says, to make a favorable report as to the title. In that, to say the least of it, he was wholly mistaken. We never intended, by word or gesture, to impress upon his mind that we wanted him to make a favorable report for the owners of the land. At that time I was very friendly with Mr. Fleming, and he thanked us for our kindness, and
503 I also thought at that time that he was a gentleman and would have considered it a gross insult to have said to him what he indicated; but, instead of that, he seemed to be very much pleased and thanked us for our kindness.

Ques. State whether you ever stated or suggested to the said Duffners or either of them not to see other people about the land or to talk to them about their negotiations, or words or anything of that kind or character.

Ans. Never did use such words or intending to have any such meaning, but during some of our conversations, after they had seen the land, I said something like this to them, that they would find a great many meddlers and busy-bodies, who was always ready to busy themselves about other people's business, and if they could not

sell all the land that was sold to strangers everything was wrong. I did caution them against such persons, but if they bought this land they could examine the records and titles for themselves; that we did not propose to sell the land without giving parties that privilege. That is about the substance of what I said.

Ques. Did you, at any time when the said Duffners or either of them were here in Buckhannon or when Joseph Duffner and Fish were here, resort to any means either by watching them or by close association with them endeavor to keep them or either them from having conversations with other people than the grantors, or do you know of any of the parties in interest employing such or other means for that purpose?

Ans. I know of no such thing. I know that Mr. Joseph Duffner went when and where he pleased without any shadowing or
504 hindrance or watching to keep him from going or talking to whoever he might please by any of the defendants, so far as I know. I desire to and do here state certain other facts. I saw Mr. Fish and Mr. Joseph Duffner at the depot in Buckhannon, after this investigation was made and on Sunday, the day before they left for home, and Mr. Fish expressed to me that he was pleased with the result of his investigation as to this title; that he really found it better than it had been represented to him. I want to here state that Mr. Duffner paid me the note he owed me long after the conversation which his son-in-law, Shmeader, said he had with me in Buckhannon, and that I had advised him not to cut any timber for 10 years. I gave him no such advice, but he did ask me how the lumber trade was. I told him that it was then dull. In the course of the conversation I did say to him that if the land was mine I would be in no great hurry to get the timber out, as the market was low; that I had no doubt that in 10 years from that time, in all probability, timber would be worth double what it then was. I was not present when this land was sold for taxes in 1877, and made no bid on it myself, and knew nothing of a certain agreement that was afterwards signed by me between the purchasers of this land at the time it was sold. I think I signed that agreement about the time or a short time before the deed was made by the State to the purchasers; did not know at the time the land was sold but very little about the history. I was told by some one that Henry F. Westfall said it was the Thomas Wilson land. I relied more on his judgment about the land and its title than upon my own. I then told that person on the street that I would not
505 mind to take one share. I never knew anything about any vices or combination upon the part of the owners to deceive any person as to the title of this land. I never joined in with Phillip Thomas to deceive or defraud any one in the sale of this land, and as to the version that Albert Marple gave of what should have occurred between him and myself in regard to his asking me for the taxes of 1881, that I should have indicated in any manner that I had any doubt as to the validity of this title, was not true, and he knows it is not true. Mr. Duffner, long after he had his deed, in August, 1883, when he was with his son-in-law and this

man Baldwin, he said to me that he was well satisfied with his purchase, and had a fine prospect of making a nice thing out of it.

Cross-examination:

Ques. by M. T. Frame, att'y for p't'ff. At the time you first met Duffner and commenced, in connection with Cooper and Thomas, the negotiation of the sale to the Duffners did you represent yourselves as a committee authorized to negotiate the sale?

Ans. I did not represent, so far as I was concerned as a member of a committee, that we had the absolute power or legal right to close a contract binding the owners of the land, and that was the reason why the committee did not sign the paper-writing.

Ques. Did you not afterwards, both verbal and in writing, represent that you were one of a committee authorized to sell this land prior to the execution of the deed?

Ans. I have no recollection of any such language being used. If there was it was not at the time of this paper-writing, and had no connection — the sale, and was not intended to mean that we
506 had the legal power or right to sell.

Ques. I do not use the word authorized to mean such authority as given by power of attorney, but in that limited sense and and mean such authority as is given to agents for the sale of lands. With that view would your answers be the same as to the foregoing questions?

Ans. What might be anybody's else view of such language as might not be embraced in a legal power of attorney I don't know, but any language and authority used or made by the owners of this land in the appointing of this committee, in my judgment, did not mean to grant the legal power to sell this land, and therefore my answers to the foregoing question—my answers would be the same as to the foregoing questions.

Ques. You have stated "that if any such language was used that certainly it was not and had no connection with the transaction of the sale of this land." Do you mean by that that it is probable that you said so or used such language?

Ans. I do not mean that it was probable, but if it was said
507 or used it was not intended that we had the legal right to sell this land absolutely.

Ques. Do you mean by the word "absolutely" to deny that you had the power to grant by deed, or do you mean to say that you had no power to negotiate a sale such as to represent the land, enter into preliminary contracts, and to receive money as part of the purchase price, or what do you mean?

Ans. I did not mean by using that word that it simply applied to the making of a deed, but meant by that that this committee had no power to make a contract binding the owners of the land to anything that we might do as a committee, but it was to ascertain the best offer we could get for the land and report to the company.

Ques. Is it possible that when Duffner went away from Buckhannon, in April, carrying a copy of the contract, having paid $100 to you of the purchase-money, and afterwards, on the 2nd of May,

sending you a check for $2,000 on the purchase-money, — was deceived in supposing that he was dealing with those who had authority and that you knowingly assisted to deceive him?

Ans. It was not done for any such purpose, to deceive the Messrs. Duffner, and they could not have been deceived as to the authority of the committee, for we plainly told them that we had no authority to bind the owners of the land in anything that we did there, and that was the reason why we didn't sign the paper-writing. Their agreement to pay the $100 and send the $2,000 was a matter that they themselves agreed to do, and if it was a foolish agreement that was no matter of ours, but receiving this money there was no intention on our part of wronging them in any way. That is the
508 reason why I told Joseph Duffner in Cleveland on the 2nd day of June that if we failed to get a deed according to the provisions of that first paper-writing that I would be responsible for the monies he had given me on this land, and he said with that promise he was perfectly satisfied, he having failed to make any provision in the paper-writing about it.

Ques. You admit, then, that you knowingly deceived Duffner and offer in explanation that you didn't intend to use the advantage thus gained?

Ans. No, sir; I do not admit any such thing. There was no such intention and no such thing was done.

Ques. Was you authorized to receive the $2,100 in cash on the sale?

Ans. No, sir; I was not authorized to receive any money. That was a suggestion of my own; not even a suggestion of the balance of the committee. I thought Mr. Duffner should leave something to show good faith, and the fact of his placing that money in my hands was one of the reasons why I felt in honor bound to say to Mr. Duffner, in Cleveland, that if we failed to get a deed that I would pay him back that money, and this I said in the presence of Mr. Fish.

Ques. Then you admit that you knowingly transcended your authority in receiving this money?

Ans. I had no authority to receive money. If that is transcending authority then I transcended it.

Ques. You have spoken about a moral obligation resting upon you as the reason why you promised to refund the money in case the deed was not executed. Is it not a fact that the establishment of that promise depends entirely upon oral testimony, you being the only witness who ever testified to it?

509 Ans. Yes; it depends upon oral testimony, for there was no part of it submitted to writing.

Ques. Isn't it a fact that in all these transactions where Duffner promised you or your company anything that you required a writing, and that where you or your company was supposed by Duffner to be obligated that you have carefully avoided any written evidence of that obligation?

Ans. No, sir.

Ques. State the exception.

Ans. The question preceding this last was not fully answered be-

fore the last was written, and I now further answer in completion of my answer to the question last but one. We required of the Messrs. Duffner to put in writing what they would give for the land upon the condition that we, the committee, could procure a deed in accordance with the paper-writing that they signed, so that we could submit their proposition to the owners of the land as something tangible upon which they might be disposed to make a deed, and that reason was fully explained to the Duffners when they signed the paper. The Duffners could not have thought that the committee was trying to avoid obligating ourselves or the company by not signing it, for there was no one thing better understood in the whole transaction than we had no power to bind the company. It is true that we did in all our transactions require their obligation in writing, but we did not carefully try to avoid signing any obligation to them that we had a right to sign. If we had had a right to have signed any obligation binding the owners of the land we would
510 have done it. The reason why there was no obligation given to Mr. Duffner for the return of $100 and the $2,000 in case no deed should be made was simply because he did not ask it of me. If he had asked me to give him some obligation to return the money in case he did not buy the land and get the deed I would have given it to him individually. The $2,000 was not sent to me till some time after this transaction, and when he did send it he did not ask any obligation to return it on my part.

Ques. Then you did avoid giving him any writing evidencing any obligation on the part of the company?

Ans. It was no avoidance. It was simply that we had no power to give an obligation. We didn't try to avoid anything it was our right or duty to give to Mr. Duffner in the whole transaction.

Ques. I will ask you to think carefully and say whether you, as one of the committee at least, prior to the execution of the deed by the company to Duffner, did not represent to him that you was one of the members of the committee appointed to sell this land.

Ans. I never represented to them that I was one of the committee that had the legal power to sell the land to them, but was appointed as one of the committee, as I have already said, to receive any bids that we might get from any party and report it to the owners, all of which was fully explained to the Duffners.

Ques. Is your recollection good or bad?

Ans. I don't know that I would myself know if it is good or bad. I suppose that I have ordinary recollection, as most of people, and when I state a fact that I know it is always because I recollect it.

Ques. When you state that you made no such representa-
511 tions is it because you recollect you did not?

Ans. Yes, sir.

Ques. Are you as certain of this fact as you are of any other facts you have stated in this deposition?

Ans. I am quite certain of this fact named, but there may be other facts named in this transaction that is more vivid upon my recollection.

Ques. Have you any doubt about this one fact?

Ans. To the very best of my recollection it is as I have said.

Ques. Look at the paper now here shown you and filed as exhibit in this question, marked "C C," and state whose handwriting the paper is in and whether or not you did not there sign yourself "D. D. T. Farnsworth, chairman of the committee appointed to sell the land?"

512 I do hereby agree to secure or cause to be secured a deed from George Henning and others for a certain tract of land, containing 40,000 acres, more or less, and known as the Wm. H. Morton land, which was sold for the non-payment of taxes, which deed is now made to Joseph Duffner, Chas. Duffner, and Mathew Duffner, and to be delivered to Joseph Duffner, and if I fail to secure such deed I will forfeit to said Joseph Duffner three thousand two hundred and fifty dollars.

Witness my hand and seal this 2nd day of June, 18—.

D. D. T. FARNSWORTH,
Chairman of the Committee Appointed to Sell said Land.

Endorsed as follows: Exhibit "C C."

Ans. Yes, sir; I certainly did that writing and signed my name here, and this is the obligation I signed in Cleveland, that I spoke of as having signed on the 2nd day of June and gave to
513 Joseph Duffner, that I would forfeit the amount named if I failed to get the deed.

Ques. Don't that paper represent that you were chairman of the committee appointed to sell said 40,000 acres of land?

Ans. It does so represent, but the wording "to sell the land" did not in reality mean that I had the legal power to bind the owners of the land, for that had been fully explained to the Duffners at Buckhannon at the time they gave that first paper-writing, and this paper was drawn up long after that transaction was signed, as it was to give to Mr. Jos. Duffner the assurance that I would deliver to him the deed or forfeit the amount of money named in this paper and for no other purpose.

Answer excepted to. Question repeated and a direct answer demanded.

Ans. Yes, that paper represents that, but in fact I had no legal authority to sell the land.

Ques. Doesn't that paper antedate the execution of the deed to Duffner? How do you reconcile your two last answers with the one preceding, in which you say that you made no representations to Duffner prior to the execution of the deed to him that you were one of the committee appointed to sell this land?

Ans. I have no difficulty to reconcile them, for my meaning was in all my former answers to apply to all transactions that the committee and the Messrs. Duffner had in Buckhannon at the time that they and the committee were together and got up this first paper-writing, and that this paper was signed in Cleveland without any

action of the committee or without consulting the committee,
514 and when I put my name to that instrument in Cleveland I did not mean by that that I had power as the chairman of the committee to legally sell this land, and it was not written for any such purpose, as the body of the instrument will show, and Mr. Joseph Duffner could not have so understood it.

Ques. How do you reconcile the representation that you admit appears on this paper with your absolute, unqualified, and repeated denial that you ever made such representation?

Ans. I reconcile it upon the ground that my mind was upon the fact as to what had been represented to the Duffners at the time of this first paper-writing already alluded to, in the town of Buckhannon, on the 24th of April, 1883, and I hadn't this paper in my mind at the time, for it had no connection with the fact or any of the transactions had with the committee and the Duffners, at Buckhannon, in regard to this land in any way, and I didn't remember until this paper was now presented to me that I had placed that appendage to my name, for it had no business to be there.

Ques. Didn't you put "that appendage" to your signature with a view of avoiding any personal obligation, since you insist that it had no business to be there?

Ans. I did not put it there for the purpose of avoiding any personal obligation, for, in fact, there was no one but myself bound by that obligation.

Ques. If you had no business to put it there and no authority why did you do it?

Ans. I suppose it was put there thoughtlessly, for I had no object in view in the world to bind anybody else.

515 Ques. Is it likely that a man would thoughtlessly represent the existence of a committee, and himself the chairman of it, when in fact and in truth there never was such committee?

Ans. It is not likely if there never had been such committee, but there had been a committee, and I suppose it was on my mind when I put that there, but I had no intention of binding any one but myself and had no power to do so.

Ques. How do you reconcile your answer before the last on this subject with the deposition of Valentine Strader, who testified that the company had had a meeting and appointed yourself, Jackman Cooper, and perhaps others, to sell the land, and that the reason he took no active part in the negotiations was because he chose to speak through his chosen agents, and also of the deposition of Phillip Thomas on the same subject?

Ans. I have no difficulty in reconciling them, for I do not know why Valentine Strader & Mr. Thomas would have made use of the language you say they did, or in what light they may have viewed this committee, but I do know for myself that the said committee never did have any legal right, power, or authority to sell this land, but it was only to report as to the best offer they could get to the owners of the land for their ratification or rejection.

Ques. Do you want to retract what you have said in your last answer but one?

Ans. What was said in the answer to the question last but one was not intended in using the words "such committee;" that
516 I meant by that the committee ever had any power or right to sell the land, but was only intended to mean that there was a committee.

Ques. Will you look at the original agreement to purchase the land, signed by Duffners, if you have it in your possession, and if not speak from recollection, and say whether upon the face of that instrument it doesn't appear that the sale was being made by this committee?

Ans. I have not the instrument with me, but can get it in a few moments. I now have the instrument before me, and in answer would say I do not recognize in the instrument that the committee claimed any power to sell the land, but the whole obligation of the instrument shows what the three Duffners—Charles, Joseph, & Mathew Duffner—*for* what they agreed to give for this land, upon certain conditions named in the writing. One of the conditions, that if "D. D. T. Farnsworth, Jackman Cooper, and P. Thomas shall make or cause to be made to us, the undersigned, a deed, as above stated, for said 40,000 acres, we will faithfully perform our obligations herein made. Witness our hands and seals this day and year of our Lord, April the 24th, 1883." Signed by Charles Duffner, Joseph Duffner, and Mathew Duffner, but not signed by any member of the committee. The other parts of the instrument shows for itself, and the reason the said committee did not sign it was that the committee fully explained to the Messrs. Duffner that they had no power to make any instrument of writing that would bind the owners of the land, and the Duffners so fully understood this that they did not even require us to sign it.

FEBRUARY 26TH, 1887.

Present: John Brannon, attorney for defendants who have
517 answered and H. C. Coon.

Present: M. T. Frame, att'y for p't'ff.

D. D. T. FARNSWORTH continued:

Ques. Independent of the verbal statement which you say was made to Duffners "that the committee had no power to sell," and looking at the two writings, the one marked "C C" and shown you yesterday and the one now before you, can you say that you did not represent to the Duffners that your committee had power to sell the land?

Ans. I do not so consider it.

Ques. You have stated that Fish saw that the deed to Morton was but a copy which had been recorded on the certificate of Frederick Bull before Duffner paid the purchase-money and received his deed. Are you positive of this fact or might you not be mistaken?

Ans. I am certain of that fact, for that was one of the reasons that he called for the commissioner's land books to see whether this same land was charged to any other person or persons in the year

1876, for which year the said land was returned delinquent and sold in 1887, and when he had so examined the assessor's books and some of the statutes of West Virginia he then decided that as he found that it was not charged in any other name than that of Wm. H. Morton he said that by the statutes, they being about the same as the laws of Ohio, that it made no difference whether Morton had title or not, it being the same land. I cannot be mistaken in this, for at the time it created some commotion, especially upon the part of Mr. Fish, when he discovered that the deed made to said Morton was said by Frederick Bull to be a "true copy of the original."

518 Ques. Did you look at the deed at the time and know that Fish was looking at the Morton deed?

Ans. To the best of my recollection, I did.

Ques. Look at the deed now here shown you, being the deed of George W. Howard to Wm. H. Morton, dated the 1st day of July, 1873, and recorded in Deed Book "K," pages 174 & 175, and tell me if you are not wholly mistaken as to what you have said in relation to that deed.

Ans. I will say, before looking at it, that my impression is that I am mistaken as to the date, but not as to the facts. Upon reflection it was the deed made by John Peter Dumas, trustee of James Swann, who had made and constituted August Requet his lawful attorney to sell and convey and transfer all that certain tract of land surveyed for Thomas Wilson. The deed I had reference to was the deed made by John Peter Dumas, trustee, by August Requet, his attorney-in-fact, to George W. Howard, recorded in Deed Book "K," pages 172 & 173, which deed was certified to by Frederick Bull on the 24th February, 1867, who certifies that "the foregoing is a true and correct copy of said original deed," which was signed by Frederick Bull. That was one of the deeds I had reference to instead of Wm. H. Morton.

Ques. How is it that you can be mistaken about these important matters when speaking under oath? Is it a want of attention, or how do you account for it?

Ans. I am not mistaken as to the important matters, and I am not mistaken as to the deed I alluded to, but when I named Morton I simply misspoke as to the name, which should have been Howard, which came to my mind; very plainly that I had misused

519 the name, but not as to the fact of the deed.

Ques. When you swear that you looked at the deed to Morton and knew that Fish looked at it and saw the defect arising from the Bull certificate, and now admit that there is no such certificate to that deed, do you regard such statements, though under oath, unimportant?

Ans. I have fully explained that the certificate of Frederick Bull was attached to the deed I have named, and was not attached to the deed made by Howard to Morton, and that Mr. Fish did examine not only the deed that I have stated had the certificate of Bull attached to it, but also the deed made by Thomas Wilson to James Swann, made on the first day of January, 1796, and also the deed

made by George W. Howard to Wm. H. Morton the first day of July, 1873. All of these deeds are recorded in Book "K" and were examined by Mr. Fish on that occasion. I regard no statement made under oath as unimportant.

Ques. Isn't it true that this statement in relation to Fish having examined all the records in the office, and particularly the defective deeds before the deed to Duffner, has been developed by the defendants in this cause since the verdict of the jury in the lawsuit between you and Duffner relating to the same subject?

Ans. No, sir; it was not developed since the lawsuit. It was developed in the clerk's office at the time Mr. Fish examined the records, but this defense was not made in the trial at Wheeling, from the fact that it was not set up in the bill of complaint that they had not so examined the records, as I have stated, and was only developed at that trial by Mr. Fish when giving in his evidence
520 that he had not examined these particular deeds or records named by me and others, and the reason we set up that fact now in this cause is that they were examined as stated, but denied by Mr. Fish at the trial at Wheeling.

Ques. Then the first time that you sought to make use of these facts was after the verdict and in the shape of affidavits to be used on a motion to set aside the verdict?

Ans. Yes, sir.

Ques. You have stated that after Fish made his examination and had looked at everything pertaining to the land in the office, and said, "It is all right," that you and Henry F. Westfall each for himself said in substance to continue your search if you are not satisfied until you are satisfied, one of you adding, "We want no afterclaps, and some say tax titles are wild-cat titles." Did that occur?

Ans. That did occur, but not in the exact language above, but occurred in the language I before have stated, as near as I can recollect.

Ques. What did you invite him to continue the search for if he had looked at everything?

Ans. When he announced that he had searched until he was perfectly satisfied as to the title being all right Henry F. Westfall spoke up and says, "If you are not perfectly satisfied here are the books and papers in the office. Search until you are satisfied or not take the land, for we want no afterclaps, for some people say that these tax titles are wild-cat titles." I then said, "That is just what
we want you to do. We want you, if you have not fully sat-
521 isfied yourself as to the title, to search until you are satisfied or not to take the land." Mr. Fish said that he had searched until he was satisfied that the title was all right, and I did not at that time know of any record or matter pertaining to the title but what he had looked at.

Ques. Knowing that fact, then, your request for him to continue the search was mere buncombe on your part, was it not?

Ans. I did not so consider it, nor did not intend it for buncombe, but wanted him to be fully satisfied as to the title or I did not want him to take the land.

Ques. What, did you expect him to find by a continuation of his search?

Ans. Well, I didn't really think he could find anything more, for I knew of nothing more, but it was more for the purpose to call his mind to the fact that we wanted them to be perfectly satisfied as to the title or not to take the land.

Ques. Wasn't it because you were extremely anxious that he should be satisfied with the title and take the land?

Ans. No; it was not for that reason, but it was that he should be satisfied as to the title or we did not want him to take the land.

Ques. What additional satisfaction did you expect Duffner would derive by Fish continuing his search when you knew there was nothing more to be developed by that search unless he might derive satisfaction from the candor with which you extended the invitation?

522 Ans. I knew of no additional satisfaction that he might get from continued examination, for I knew of nothing else pertaining to the title that he had not examined, but the candor in which we suggested to him that if he was not perfectly satisfied to further examine, as we have said, was not done by me to beget a satisfaction in the mind of Mr. Fish; it was not done for that purpose, but in good faith.

Ques. Did you know that Fish returned to the office on Saturday evening after missing the train and again on Monday morning before he could get a train to look further to the records pertaining to this land?

Ans. All I know about it was what Mr. Fish told me afterwards. I am not certain where it was he told me, but think it was at the train on Monday morning; and he told me the reason that he had returned to the office was that he wanted to take a list of the deeds and papers that he had examined before the deed was received, thinking it might be of some advantage to Mr. Duffner in selling the land, but he did not intimate to me that he found anything additional or anything wrong with the title.

Ques. Did you not, as one of the committee, during the negotiation of the sale to Duffner and afterwards when meeting him, represent to Duffner that the company's title was a good title to the land?

Ans. I have no recollection of ever saying to Mr. Joseph Duffner or anybody else other than that I believed the title to be good.

Q. Didn't you admit on the witness stand on the law trial before referred to that you had told Duffner that the title was good
523 and offer in explanation, "I thought then it was good and I still think it is good"?

Ans. I have no recollection of ever using any other language than to express that I always regarded the title as good.

Ques. Might you have said so?

Ans. I might or might not; I don't recollect as to that; but if I did I certainly qualified it by saying that I always regarded it as good.

Ques. Did you not say to the three Duffners, to Wm. H. Ransom,

to August Baldwin, and Fish that the title sold to Duffner was a good title?

Ans. I never said to either of them anything other than I believed the title to be good.

Ques. Why did you relate to Duffner and Fish what you have stated you related to them in relation to the New York lawyer, Johns, having been here with a view of contesting your title unless it was intended as an argument that your title was good?

Ans. The fact of this New York lawyer being here and giving all the records a thorough examination as to our title under the tax sale and going away without bringing a suit, as he said he was authorized to bring, and the further fact that the land was sold for $100,000, lawful money of New York, in hand paid, did have considerable to do, in addition to other facts, to satisfy my mind to believe that our title was good, and I so stated to Mr. Fish and Mr. Duffner.

Ques. Didn't you relate that to them for the purpose of satisfying them as to the validity of your title?

Ans. No; I did not relate it to them for that purpose. It
524 merely came up in the course of general conversation in regard to this land.

Ques. At the time you drafted the contract of purchase and erased the word "twenty" and inserted fifteen did you not, together with Thomas, represent to the Duffners that you and Thomas were entitled to receive $5,000 of the $20,000, and that the other owners were to receive the $15,000; that the $5,000 was coming to you, Farnsworth, and Thomas, as members of the said committee, for the great trouble and labor you had performed and was still to perform, and did you not then ask the Duffners, as it made no difference to them, to allow the purchase price to appear at $15,000, they executing to you their private obligation for the $5,000?

Ans. I never made any such demand nor any such representation.

Ques. You have stated that in a conversation with Fish and Duffner at the former's office you showed Fish the papers relating to the $6,500 due from Duffner to you and Thomas, and that you talked over the trade with him generally. Do you know if at that time or any other time before coming to Buckhannon Fish had seen the original contract of purchase executed by the Duffners?

Ans. I do not know whether Mr. Fish at that time had seen the original contract or not, and as to what Mr. Fish might have known in regard to this $6,500 Mr. Joseph Duffner and myself both explained to him when he asked Mr. Duffner to let him see what we were doing in these paper-writings, and Mr. Duffner showed them to him, and we both explained to Mr. Fish that it was to pay Phillip Thomas and myself the amounts named for our services if we
525 should procure a deed for the said land that they would accept, and if we did not we were to have nothing, and also that paper-writing, filed here by the plaintiff, given by me, purposing to forfeit $3,250 if I failed to get such deed, and Mr. Fish said that was all right.

Ques. Don't you remember that Fish looked at the original con-

tract on that occasion and remarked, You have carefully guarded individual interest, to which you replied, "We intended to do so," and didn't you so state on the trial at Wheeling?

Ans. I have no recollection of anything of that kind in his office. It might have been; I have no recollection of it.

Ques. Did he know at that time what Duffner was paying for the land?

Ans. I am not certain about that; he may or may not.

Ques. Have you not, since the rendition of the verdict before referred to, transferred to your son a debt due you of about $800, being the residue of $1,100 due you from Geo. W. Barner, of Sago, Upshur county, and secured by a deed of trust upon a 146 acres of land, by a writing dated back prior to the verdict?

Ans. I did assign the bal. that was due me from Barner to my son in some legitimate business that we had, but at what time that was done I do not remember; I suppose the date of the assignment will show.

Ques. Wasn't it done since January, 1885?

Ans. I have said I do not know when.

Ques. Where is the assignment recorded?

Ans. I do not know; do not now recollect whether or not it is recorded; it may have been.

526 Ques. How is your recollection usually on business matters?

Ans. I suppose about as good as the common run of people; matters of importance I remember pretty well.

Ques. Don't you know that it was since that verdict, while the paper shows a date prior to the verdict, and that it is not recorded?

Ans. I have no recollection that it was since the verdict nor at what date it was given, and do not now know whether it is recorded or not.

Redirect:

Ques. by M. T. Frame. On the cross-examination it was suggested that you had carefully avoided signing papers binding you or your associates, and required Duffners to sign all papers obligating them. State whether the $2,000 check you have referred to was endorsed by you before its collection or not.

Ans. It was endorsed by me before its collection.

Ques. In speaking of paper "C C" it has been stated in the cross-examination that below your name there *to* the words "chairman of committee appointed to sell the land" appear. Was it not a common expression when the committee was referred to to speak of it as a "committee to sell the land" without intending it to be understood or expressed that said committee had power in fact to sell the land?

Ans. It was a common expression among the owners of the land. I may have used it myself, but it was not intended to express that the committee had power to sell the land.

Ques. You was asked on cross-examination if Fish did not

527 remark when reading the paper signed by the Duffners, called

agreements, that you or the company had carefully guarded the interests of individuals, and whether you had not so stated in your examination in Wheeling upon the law trial. Is it not true that after Mr. Fish had read the deed of the grantors of this land to the Duffners, which was after you had seen Mr. Fish in Cleveland, that the said Fish made the remarks in regard to the deed "that you had carefully guarded," &c.? And if such matters was spoken of in Wheeling as witness state what it was about.

Ans. The language alluded to in regard to "carefully guarding the interest, &c., of the owners of the land" was after the time that I was in Mr. Fish's office, in Cleveland, and was made at the time that Mr. Fish read the deed that the Duffners accepted in the clerk's office, on the 14th day of July, 1883. If any such language was stated by me as a witness on the law trial at Wheeling it was as to the time Mr. Fish read this deed and made the above remarks.

And further deponent sayeth not.

D. D. T. FARNSWORTH.

The above D. D. T. FARNSWORTH recalled by consent:

Ques. by p'lff's counsel. Did you not at one time prior to the sale to Duffner have a gentleman by the name of Wallace here looking at the land, who declined to consummate the purchase by reason of a legal opinion given by W. G. L. Totten, and did you not afterwards call upon Mr. Totten to know the objections he had to the validity of the title, who, in explanation of his opinion, pointed out
528 to you the defective and copied deeds in the chain of the title from Wilson to Morton?

Ans. There was a man here a good many years ago—I don't remember how many years; don't remember his name; it may have been Wallace—who said he had been up on the land, and talked about buying it, and asked me what the company asked for it. I told him what the company asked for it, but do not remember what it was. He said he did not expect to buy it on that trip, but would have to go home and consult with some parties he was connected with, and would likely let us know in a short time whether or not he would take the land, but he rather thought that it was likely they would take the land. He went away, and I have never seen or heard from him since, and don't know his reasons for not taking the land. I had heard that Mr. Totten had made out some kind of memorandum in regard to this land at the instance of some person—I do not remember who—and to the best of my recollection I went to Mr. Totten some time after that and asked him whether he had made out some such memorandum or abstract, whatever it was, and he said he had, but he did not show it to me that I have any recollection of. I asked him how he found it, or something to that effect. As near as I can recollect he said he found it pretty good, but he found some little discrepancies, but didn't know whether they amounted to very much, but he did not point out to me any defective deeds or any other defects that he might have spoken of,

and in all this there was nothing to convince my mind specially either for or against the title of the land.

D. D. T. FARNSWORTH.

529 PHILLIP THOMAS, being recalled by consent, spoke as follows:

Ques. by counsel for defendants. I call your attention now to the meeting of which you have spoken in the upstairs room in Buckhannon, where you say the Duffners, yourself, Farnsworth, & Cooper were negotiating about the purchase of this land by the Duffners. If anything was said by the said parties or either of you there or elsewhere about surveying or ascertaining the land in the survey not occupied by actual settlers for ten years or more, state what it was and by whom and what understanding, if any, there was on this subject.

Ans. To the best of my knowledge the question, I think, was proposed by D. D. T. Farnsworth that if a sale or consummation of the sale be accomplished that the company would expect the purchasers to make a survey of the tract to find out the amount of acres that was not occupied by actual settlers, such survey to be made as soon as practicable after the making out of the deed. The Duffners agreed to have that done as soon as practicable after the deed was made.

Ques. by counsel for plaintiff. Did you not on your visit to Cleveland with Fish and Duffner change the contract with Duffner in relation to the $6,500 and receive from him paper that you negotiated on that occasion for cash, which fact you reported to Farnsworth, who afterwards went and did similarly?

Ans. No; I did not. I did get my money that time.

PHILLIP THOMAS.

530 W. G. L. TOTTEN, introduced by the plaintiffs, being duly sworn, deposeth and sayeth as follows:

Ques. State what examination of the title of Henning & Co. to the 40,000-acre Wilson survey you made for a man by the name of Welch or Wallace, and the result; and if D. D. T. Farnsworth ever asked you what your opinion was based on and you made any explanation to him, state what it was and when it was.

Ans. I don't remember the year, but it was some time before the sale to Duffner Mr. Welch, of Pittsburgh, came here, and while here he gave me a fee for an examination of the title to the 40,000 acres. He had been here some time before that, he told me, and had taken an option from these owners on the 40,000 acres, and had come on at this time I speak of to close up a contract for the purchase of the land. He wanted my opinion as to the title and I gave it to him. I advised him against purchasing the land and he left. After he left there was some correspondence, as I understood, between him and Mr. Farnsworth, and, I think, at the instance of Mr. D. D. T. Farnsworth and from what I understood from him Mr. Welch wanted an abstract of the title, and I think I made out an abstract and it was

sent to him by myself. Perhaps two months after that Mr. Welch returned to Buckhannon, accompanied by a son of Judge Mellon, of Pittsburgh. They seemed very anxious to purchase the land if the title could be made good. They both consulted me and asked me questions concerning the title, and my answers to all their questions were in the negative, and they left. A short time after that D. D. T. Farnsworth came to me and said that he understood that
531 I had objections to their title to the 40,000 acres, and wanted to know of me upon what grounds the objections were founded. He said he wanted to know my objections, and said if they did not have a good title to the land he wanted to know it. I told him I would show him, and we together went into the clerk's office of the county court, and I showed him the different deeds and power of attorney in connection from Thos. Wilson down to Howard, and the certificates thereto of Frederick Bull. Mr. Farnsworth read them over and went on to state that they were all right, and that ended the matter between us.

Ques. by counsel for defendants. Were you in the clerk's office of the county court of Upshur county in July, 1883, when a Mr. Fish, Joseph Duffner, and others were examining the deeds and records in relation to this 40,000 acres of land?

Ans. Yes; I was there during that whole week as deputy for Mr. McWhorter, who was absent.

Q. State if you heard the said Fish, when examining the records of deeds — that what appeared to be as to some of these deeds in the chain of title deeds were only what had been certified as copies that had been admitted to record, or state what you may have heard him say in this regard.

Ans. It was after the transaction had been closed, as I understood, and Mr. Fish had completed his examination of the record, and I heard Mr. Fish tell Mr. Duffner that the title was all right, and that he could go on and close the contract, or something to that effect. They left the office for awhile. Mr. Fish returned with some of the parties to the office and said he wanted to examine the old deeds and take some notes which he said perhaps might be
532 needed hereafter. He read over the deeds and the certificates, acknowledgements, &c., and then he appeared to be deliberating, and after a little while he said, "They are copies." This is all I heard him say about it.

Ques. Can you state the day when this last occurred?

Ans. If I remember right, he and Mr. Duffner were anxious to get off on the train on Friday or Saturday, don't know which, and there was some accident on the road and the train did not run. I think they remained over Sunday on account of this accident, and it was after they found they could not get away that Mr. Fish returned to the office and made this further examination of the deeds. Whether it was Friday or Saturday I do not know.

And further this deponent sayeth not.

W. G. L. TOTTEN.

Costs.

To 56 hours employed taking above, 75 cts.	$42 00
Witness Chas. Fischer, 1 day, 30 miles	4 00
" Fred'k Brinkman, 1 day, 15 miles	2 50
" Watson Westfall, 2 days, 3½ "	3 70
	$52 20

533 STATE OF WEST VIRGINIA, *Upshur County,* } *To wit:*

I, Allan A. Simpson, a notary public of said county, do certify that the foregoing depositions were, by consent of the plaintiff and by the consent of the defendants who have answered and H. C. Coon in the chancery cause of Joseph Duffner, plaintiff, against D. D. T. Farnsworth and others, defendants, pending, as stated in the caption thereto, to be read for and in behalf of the defendants who have answered the bill of the plaintiff and H. C. Coon, except the deposition of W. G. L. Totten, to be read for the plaintiff *were* taken and written by me, the deponents being first duly sworn by me, and the same were subscribed to before me by the respective deponents thereto, and I certify that I have no seal of office.

Given under my hand this 26th day of February, 1887.

ALLAN A. SIMPSON,
Notary Public.

534 JOSEPH DUFFNER, Pl'ff,
vs.
D. D. T. FARNSWORTH & Others, D'f'd'ts. } In Equity.

It is hereby agreed by the plaintiff in the above-styled cause, in equity, pending in the district court of the United States for the district of West Virginia, at Wheeling, and by the defendants who have answered the bill of the plaintiff and H. C. Coon, that the deposition of Isaac N. Simons, taken and filed in the suit of law in said court, between said parties, on the motion to set aside the verdict of the jury therein, may be read on the hearing of this cause in the same manner & to the same effect as if the same had been taken and filed herein for that purpose.

Feb'y 25th, 1887.

JNO. BRANNON,
For said Defendants Who Have Answered and H. C. Coon.
M. T. FRAME,
Of Counsel for Plaintiff.

535 JOSEPH DUFFNER,
vs.
D. D. T. FARNSWORTH. } In Chancery.

Depositions of def'ts taken before me—

A. A. SIMPSON,
Notary Public.

It is again understood this package is given to Mr. Frame to deposit with clerk, to be read in evidence.

(Signed) JNO. BRANNON, *For Def'ts.*

Rec'd from the hands of M. T. Frame, Esqr., and filed March 1st, 1887.

Test: JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

Opened in court by order of court this 2nd March, 1887.

Teste: JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

536 EXHIBIT "VERITAS No. 2." Filed with the Deposition of C. C. S. McWhorter.

537 List of real estate within the county of Upshur sold in the month of October, 1875, for the non-payment of taxes thereon for the years 1873 & 1874, and purchased for the State of West Virginia.

Name of person charged with taxes: Wilson, Thomas.
Quantity of land charged: 40,000 a.
Local description of land: W't's Buckhannon river.

Amount of taxes due thereon for State and school purposes, including interest & damages:

For the year 1873: ——.
For the year 1874: 71.92.

Amount of county tax due thereon, including same:

For 1873: ——.
For 1874: 95.89.

Amount of T. P. tax due thereon:

For 1873: ——.
For 1874: 83.90.

Quantity of land sold: 40,000 a.
Date of each sale: Oct. 11th, 1875.
Amount of purchase-money paid, including interest and damages: $251.71.

I, J. W. Heavner, sheriff of the county of Upshur, do swear that the above list contains a true account of all the real estate within my county which has been sold by me during the present year "for *for*" the non-payment of taxes thereon for the years 1873 and 1874 and purchased by me for the State of West Virginia, so help me God.

J. W. HEAVNER, *Sheriff.*

Sworn to and subscribed before me this 3rd day of November, 1875.

Teste: J. M. BENNETT, *Clerk.*
C. C. F. McWHORTER,
Dept. for J. M. Bennett, Clerk Upshur County Court.

WEST VIRGINIA,
County of Upshur, } *ss:*

I, C. C. F. McWhorter, clerk of the county court of said county, do certify that the foregoing is a true and complete abstract from record of my said office of the returns made by J. W. Heavner, sheriff of said county, of the sale of delinquent lands made by said sheriff on the 11th day of Oct., 1875, in said county.

Given under my hand this 16th day of February, 1887.

C. C. F. McWHORTER, *Clerk.*

538 Endorsed as follows: Veritas No. 2, with deposition of C. C. F. McWhorter.

539 To Joseph Duffner.

SIR: You will take notice that the defendants in the action in law now pending in the district court of the United States for the district of West Virginia, at Wheeling, in which you are plaintiff & myself & others are defendants, upon a motion to set aside the virdict of the jury therein and to direct a new trial, will take the affidavit or deposition of Isaac W. Simons, at his place and house or residence in Upshur county, West Virginia, on the 2d day of May, 1885, between the hours of 7 o'clock a. m. & 7 o'clock p. m. of that day, to read on the hearing of the motion aforesaid.

May 1st, 1885.

D. D. FARNSWORTH,
By His Counsel.

The following deposition of Isaac W. Simons was read, by agreement, as though it had been taken in this cause. See agreement attached to defendant's deposition, filed March 2nd, 1887. See p. 534.

540. *Deposition of Isaac W. Simons.*

In the District Court of the U. S. for the District of West Virginia.

JOSEPH DUFFNER
vs.
D. D. T. FARNSWORTH.

The following deposition of Isaac W. Simons taken to be read in above-styled case on the 2nd day of May, 1888, at the place and house of residence of said Simons, in Upshur county, West Virginia:

Present: D. D. T. Farnsworth, for the defendants, and pl'ff, — M. T. Frame, his attorney.

ISAAC W. SIMONS, a witness introduced by the defendants, being duly sworn, deposeth and saith as follows:

Question by defendant (1). What is your age?
Ans. I am in my 69th year.
Ques. by same (2). What county do you live in?
Ans. Upshur county.

Ques. 3. How long have you lived where you now live?

Ans. Twenty-eight years (28).

Question 4. Did Joseph Duffner, his brother and son, come
541 to your house at any time to look at a certain tract of land known as the Thomas Wilson or Wm. H. Morton land?

Ans. They did.

Qu-s. 5. When did they come to your house?

Ans. I think it was in the spring of 1883.

Ques. 6. What day in the week did they arrive at your house?

Ans. Late in the evening on Saturday.

Ques. 7. How long did they remain?

Ans. They stayed until Monday about 12 o'clock.

Ques. 8. What did they say, if anything, in regard to this business here?

Ans. They did not say anything about their business until Monday. After Watson Westfall came on that Monday they and Westfall together went out themselves and had a long talk, an hour or more, together. They then called me to them and told me they had come to look at the Morton and Wilson survey, and that Mr. Westfall had come to show it to them. They asked me about the quality of the land, timber, &c., and I told them that a great deal of the land was well timbered and a great deal of it was rich and a great deal of it rough and hilly.

Ques. 9. Did they ask you or not your opinion about the title to the said land; and, if so, what did you say to them about what you thought about the title?

542 Ans. I told them that as far as I knowed the Wilson and Martin survey was covered by other titles. I told them of the old Bond title, if it was ever established, and of the Davenport title—it was on a great portion of it—and that all east of where I live was all covered by the Welsh title, owned by Rich. I also told them there was another Wilson title, a younger title, that claimed here where I live, in the same boundery. I told them I did not think it was in the way, and that I did not care if they took it from them, as they had taken it from me. When they started to go away I told them that I did not think they would ever be back again, and they said they expected to buy if they liked it, and if they bought a good many of them would come. This was said by Joseph Duffner's brother, I think, but they were all together. I told them I believed I could pick out many of them an acre that was worth $300 per acre. I think this ended the conversation about the land at that time.

Ques. 10. While they were here at your house did you or not advise them to look well to the title before buying?

(Objected to by pl'ff'- att'y.)

Ans. I did, and that is why I came to name the titles to them.

543 (Answer objected to.)

Ques. 11. Did Mr. Joseph Duffner or not at any other time come to your house to see about the land above named?

Ans. Joseph Duffner, his son-in-law, and some other man, whose name I did not know, and Watson Westfall met with me up the road here—on my farm—and Mr. Duffner said he had bought the survey. I said, I suppose, then, you have come to go to work. He said he had come to show his son-in-law and the men that were with him about the land and fix to go to work. Then I told him, Now, said I, Mr. Duffner, don't do as Rich has done, go to survey- and disturbing settlers, for if you don't do that you will have no trouble. Then he remarked that he was not going to do that; that he had land a plenty without theirs. It seemed to me he said he was bound not to do it. He said to me, You are all right and need not be uneasy. I think the next conversation was about the river and getting out the logs, and such like, and about building a railroad up to the land.

Ques. 12. Did they, Joseph Duffner, or not say anything to you about having examined as to the title before they bought this survey?

544 Ans. As far as I recollect he said he was well satisfied with his purchase. I could not say sure whether or not he said he had examined as to the title; I can't recollect certain about that. It does seem to me there was something said about it, but I can't state what was said.

(Above question and answer objected to.)

Ques. 13. Did you not inform D. D. T. Farnsworth or any of the other defendants in said suit of the above statement and conversation with the Duffners until after the trial in said United States court at Wheeling?

Ans. Never said a word about it to none of them, excepting Henry F. Westfall, and just a little while before he died, when he was very low, I did tell him a good deal of same statements made above; never mentioned it to any of the other defendants, for I am sure I never had any conversation with any of the others.

Ques. 14. How did you come to tell this to D. D. T. Farnsworth, and where were you?

Ans. Mr. D. D. T. Farnsworth asked me about it in Buckhannon town last February, or I suppose I never would have told him.

Ques. 15. He seemed to know of it then, did he, when he asked you?

545 Ans. I asked him how he came to know that I knowed anything about the Duffners, and I don't believe he told me how he come to know it.

Ques. When you were talking to the Duffners the first time did you not tell them that there was a large portion of the tract that you knew nothing or little about as to whether there was conflicting title on it or not?

Ans. Yes; that part way up towards Holly I said I knowed nothing about myself, but I had heard it said by others that that part was not covered by other titles.

Ques. Did you not tell them that the Bond survey could not be located or found and was not a question of serious trouble as you had heard?

Ans. Never told them so, because I did not know that it could or could not be found.

Ques. Did you not say, I told them of the Bond survey, if it could be identified? Did you not say so here to-day?

Ans. Yes; I think I did.

Ques. You used the words if it could be established in that connection, did you not?

Ans. I think not. I think I used the words identified; may have said established; don't know which word I used.

546 Ques. Did you not tell them that you did not know whether these old surveys that you have mentioned had been kept up or not, meaning that you did not know that they had been properly charged on the assessor's books for the taxations, and, if not, they did not amount to much?

Ans. Don't recollect of telling them a word about it; don't think there was anything said about these old surveys in that respect.

Ques. Did you not tell them that you did not know much about titles, and that the men they were dealing with were gentlemen in whom they could confide; that whatever they told them they would find correct?

Ans. Don't recollect of telling them anything of the kind.

Ques. Did you say anything of that import?

Ans. Not that I remember. If anything of the kind was said I do not recollect.

Ques. Did you not tell me so in the Valley House, in Buckhannon, on the 9th of February, 1885.

Ans. Never told him—you—any such thing. I told him—you—if they had asked me any such questions I would have told they were gentlemen; of course I would.

547 Ques. Did you not tell them that you did not regard the squat-ers on the land, as they could be all driven off?

Ans. I told them if I owned the land I would not regard the young titles. The word squatters was not used at all.

Ques. Did you not first agree, in the clerk's office of the county court of Upshur county in Feb. last, to give me an affidavit embracing the question I have hereinbefore asked you and go with me to the Valley House for that purpose?

Ans. I never agreed to do it. He wanted me to go with him to the Valley House and give an affidavit. I went with him to the Valley House, but refused to give affidavit and didn't do it.

Ques. What did you go there for?

Ans. Just because he—you—asked me to go. I thought Mr. Frame was one of the parties who bought the land. He began to ask me strange questions — that occur-ed, and I asked him what he wanted to know for. He said he was Duffners' council, and I said, Mr. ——, I perc*ie*ve you want me to swear to some lies; that if I was a witness I would tell all I knowed about it and tell the truth, too.

Ques. Did you have any conversation with the Duffners
548 when first here about the title to this land, and is it not true that they did not tell you what their business was, except to look at timber?

Ans. There was nothing said about the Thos. Wilson title when they were first here, whether it was good or bad, that I remember, more than they told me they had come to look at the land and timber.

Ques. They asked you no questions that time about the titles?

Ans. Not that I remember.

Ques. Did you not tell me of that at the Valley House in February last?

Ans. Not that I remember.

Ques. Did I not tell you there that if you remember that Thos. Wilson'- title was not discussed by you and the Duffners you ought not to hesitate to state it, and that if you are afraid of me misleading you we would both go to Judge John Brannon and make the correction apparent in your first affidavit?

Ans. I told him I would not go with him to Judge John Brannon's or any other place unless I was a witness and had to go. I thought he asked me too many unreasonable things and told him that he did not treat me like a gentlemen.

Ques. by same. Did we fall out that day until I told you I was
counc*i*l for Duffner?

549 Ans. Yes; it was after you told me you were counc*i*l for Duffner and after — asked me so many questions that were untrue and wanting me to make an affidavit, which I told him I could not and would not do, because the questions he wanted me to make an affidavit to were not true.

Ques. Did I not ask you to dictate yours own affidavit?

Ans. I don't recollect.

Ques. Did Mr. Duffner carry to you a letter from Watson Westfall the evening he first come here?

Ans. Yes; a little note.

Ques. Have you got it about you now?

Ans. I think not. I think it was lost, as I never keep such little things. I can tell the principal — that was in it.

Ques. (by d'f'd'ts). Did you not say here to-day that in the conversation with the Duffners the first time they came to see the land that I told them that I regarded the Wilson or Morton land covered or claimed by other titles or other parties or lapse, such as Davenport survey, Bond survey, and Welsh survey, now owned by Rich, and another Wilson survey that is younger?

Objected to.

550 Ans. Yes; look if it is not in here somewhere.

Further deponent saith not.

ISAAC W. SIMONS.

551 STATE OF WEST VIRGINIA, *Upshur County,* } *To wit:*

I, Allan A. Simpson, a notary public for said county, do certify that the foregoing deposition of Isaac W. Simon was taken, sworn, and subscribed to by and before me at the time and place mentioned in the caption hereto and in the appended notice mentioned.

Given under my hand this the 2nd day of May, 1885.

ALLAN A. SIMPSON,
Notary Public.

To 10 hours employed in taking the foregoing deposition at 75 cts. per hour.....$7 50

Endorsed as follows: Joseph Duffner *vs.* D. D. T. Farnsworth. Deposition of Isaac W. Simon. Rec'd by mail under seal this 5th day of May, 1885, and opened by me at once, as there was no writing on the envelope to indicate*d* what was enclosed. Jasper Y. Moore, clerk D. C. U. S., D. W. Va.

552 Decree entered April 30th, 1887.

At Chambers, April 30th, 1887.

JOSEPH DUFFNER
vs.
DANIEL D. T. FARNSWORTH and Others, } In Equity.

The plaintiff, Joseph Duffner, with leave of the court, this day filed to be read upon the hearing of the cause the following papers:

1. A patent issued by the Commonwealth of Virginia to Abner Cloud, dated 20th day of April, 1787.

2. A patent issued by the Commonwealth of Virginia to Henry Phillips, dated on the seventh day of September, 1795.

3. A patent issued by the Commonwealth of Virginia to Frederic Fally, dated on the 25th day of June, 1794.

4. A patent issued by the Commonwealth of Virginia to John
553 Davenport and others, dated on the 25th day of June, 1794.

5. A patent issued by the Commonwealth of Virginia to William Stewart, dated on the 18 day of April, 1786.

6. A patent issued by the Commonwealth of Virginia to Henry Diggs and Thomas Barron, dated on the 26th day of August, 1795.

7. A patent issued by the Commonwealth of Virginia to Benjamin Reeder, dated on the 24 day of August, 1795.

8. A survey made for Dr. Thomas Bond, No. 4, and dated May 20th, 1785.

9. A survey made for Dr. Thomas Bond, No. 5, and dated May 20th, 1785.

10. A survey made for Dr. Thomas Bond, No. 6, and dated May 20th, 1785.

11. A survey made for Dr. Thomas Bond, No. 7, and dated May 20th, 1785.

12. A survey made for Dr. Thomas Bond, No. 8, and dated May 20th, 1785.

554 13. A survey made for Dr. Thomas Bond, No. 9, and dated May 20th, 1785.

14. A survey made for Dr. Thomas Bond, No. 10, and dated May 20th, 1785.

15. A survey made for Dr. Thomas Bond, No. 11, and dated May 20th, 1785.

16. A survey made for Dr. Thomas Bond, N-. 14, and dated May 20th, 1785.

17. A survey made for Dr. Thomas Bond, No. 15, and dated May 20th, 1785.

18. A survey made for Dr. Thomas Bond, No. 36, and dated June 24th, 1785.

19. A survey made for Dr. Thomas Bond, No. 37, and dated June 24th, 1785.

20. A survey made for Dr. Thomas Bond, No. 38, and dated June 24th, 1785.

21. A survey made for Dr. Thomas Bond, No. 39, and dated June 24th, 1785.

555 22. A survey made for Dr. Thomas Bond, No. 40, and dated June 24th, 1785.

23. A survey made for Dr. Thomas Bond, No. 41, and dated June 24th, 1785.

24. A survey made for Dr. Thomas Bond, No. 42, and dated June 24th, 1785.

25. A survey made for Dr. Thomas Bond, No. 43, and dated June 24th, 1785.

26. A survey made for Dr. Thomas Bond, No. 44, and dated June 24th, 1785.

27. A survey made for Dr. Thomas Bond, No. 45, and dated June 24th, 1785.

28. A survey made for Dr. Thomas Bond, No. 46, and dated June 24th, 1785.

29. A survey made for Dr. Thomas Bond, No. 47, and dated June 24th, 1785.

30. A survey made for Dr. Thomas Bond, No. 48, and dated June 24th, 1785.

31. A survey made for Dr. Thomas Bond, No. 49.

556 32. A survey made for Dr. Thomas Bond, No. 50, and dated June 24th, 1785.

33. A survey made for Dr. Thomas Bond, No. 51, and dated June 24th, 1785.

34. A survey made for Dr. Thomas Bond, No. 52, and dated June 24th, 1785.

35. A survey made for David Lynn, dated November 3, 1794.

36. A survey made for Standish Ford, dated March 13th, 1793, No. 16.

37. A survey made for Standish Ford, dated March 11, 1793, No. 7.

38. A survey made for Standish Ford, dated March 11, 1793, No. 6.

39. A survey made for Standish Ford, dated March 11, 1793, No. 3.

40. A survey made for Standish Ford, dated March 11, 1793, No. 1.

557 41. A survey made for Standish Ford, dated March 11, 1793, No. 5.

42. A survey made for Standish Ford, dated March 11, 1793, No. 8.

43. A survey made for Standish Ford, dated March 11, 1793, No. 4.

44. A survey made for Standish Ford, dated March 12, 1793, No. 15.

45. A survey made for Standish Ford, dated March 11, 1799, No. 2.

46. A survey made for Standish Ford, dated March 12, 1793, No. 9.

The defendants filed certificate copies of the surveys made for Dr. Thomas Bond, Nos. 1 and 2, dated, respectuly, May 20th, 1785, of 2,000 acres each, being parts of a connection of surveys for Dr. Bond, some of which were filed as aforesaid by the plaintiff; also came H. C. Koon and filed his answers to the plaintiff's bill, to which the plaintiff replied generally.

Endorsed: No. 1. Jackson, judge. April 30th, 1887. (Signed) Jackson, judge.

558 *Decree. Entered April 30th*, 1887.

JOSEPH DUFFNER
vs.
DANIEL D. T. FARNSWORTH and Others. } In Equity.

It having been stated to the court during the argument of this cause that some of the defendants who have been served with process herein have been disposing of their property with a view to avoid their liability in this suit, it is ordered that the said defendants and each of them be, and they are hereby, enjoined and restrained from selling, encumbering, or otherwise disposing of any and all real property belonging to them or either of them until the further order of this court, and that a copy of this order be served upon each of the said defendants who have been served with process herein.

Endorsed: Enter. Jackson, judge. April 30th, 1887. (Signed) Jackson, judge.

559 *William Stewart*, 5,000 *Acres.*

Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that by virture and in consideration of a land office treasury warrant, number 14675, and issued the 21st day of October,

1782, there is granted by the said Commonwealth unto William Steuart, assignee of Robert Lylburn, who was assignee of George Stubblefield, a certain tract or parcel of land containing 5,000 acres by survey bearing date the 1st day of July, 1785, lying and being in the county of Harrison on Back Fork of Elk river, adjoining above Isaac Sedman's survey number 3, and bounded as followeth, to wit:

Beginning at a lynn, corner to said survey, thence S. 55° E. 500 poles, crossing waters of the Little Kanawha, to a sugar tree; S. 35° W. 1,600 poles, crossing said fork, to a poplar; N. 55° W. 500
560 poles, crossing said fork, to a sugar tree; N. 35° E. 1,600 poles, by a line of Isaac Sedman's said survey, to the beginning, with its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said William Steuart and his heirs forever.

In witness whereof the said Patrick Henry, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 18th day of April, A. D. 1786, and of the Commonwealth the 10th.

P. HENRY.

LAND OFFICE, RICHMOND, VA.

The foregoing is a true copy from the records.

Witness my hand and seal of office this 10th day of February, 1887.

[Seal Land Office, Virginia.]

J. A. WINGFIELD,
Reg. Land Office.

Endorsed as follows: William Steuart, 5,000 acres.

561 *Diggs & Barron, 5,000 Acres.*

Robert Brooke, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that, in conformity with a survey made on the 22nd day of November, one thousand seven hundred and 93, by virtue of land office treasury warrant No. 21948, issued the 24th day of December, 1783, there is granted by the said Commonwealth unto Henry Diggs & Thomas Barron, ass'ee of Benj. Reeder, a certain tract or parcel of land, containing five thousand acres, lying and being in the county of Randolph, on the Back Fork of Holley, adjoining land surveyed for said Benjamin Reeder, and on the southeast side of said land, and is bounded as followeth, to wit: Beginning at a white oak, corner to said Reeder, and with his line 40° E. 1,600 poles to a stake; thence N. 50° W. 500 poles to pointers;
562 thence S. 40° W. 1,600 poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Henry Diggs and Thomas Barron and their heirs forever.

In witness whereof the said Robert Brooke, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be [SEAL.] affixed, at Richmond, on the 26th day of August, in the year of our Lord one thousand seven hundred and 95 and the Commonwealth the twentieth.

ROBERT BROOKE.

LAND OFFICE, RICHMOND, VA.

The foregoing is a true copy from the records.
Witness my hand & seal of office this 10th day of March, 1887.

[Seal Land Office, Virginia.]

J. A. WINGFIELD,
Reg. Land Office.

Endorsed as follows: Aug. 26, '95. Diggs & Barron, assignees of Benjamin Reeder, 5,000 a.

563 *Abner Cloud*, 8,000 *Acres.*

Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that in conformity with a survey made on the 28th day of July, one thousand seven hundred and 85, by virtue of land office treasury warrant No. 21343, issued the 13th day of Dec., 1783, there is granted by the said Commonwealth unto Abner Cloud, ass'ee of Lewis Franklin, a certain tract or parcel of land, containing eight thousand —, lying and being in the county of Harrison, on the head-waters of the left-hand fork of the Middle Fork, a branch of Tyger's Valley river, adjoining on the northeast of his survey No. 4, and bounded as followeth, to wit: Beginning at a black oak, corner to said survey, thence by a line of the same N. 50° W. 1,920 poles to a poplar; N. 40° E. 667 poles to a black oak; S. 50°
564 E. 1,920 poles to a maple; S. 40° W. 667 poles, by a line of his No. 2, to the beginning, with its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said Abner Cloud and his heirs forever.

In witness whereof the said Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Common- [SEAL.] wealth to be affixed, at Richmond, on the 20th day of April, in the year of our Lord one thousand seven hundred and 87, and of the Commonwealth the 11.

EDMUND RANDOLPH.

LAND OFFICE, RICHMOND, VA.

The foregoing is a true copy from the records.
Witness my hand and seal of office this 10 day of March, 1887.

[Seal Virginia Land Office.]

J. A. WINGFIELD,
Reg. Land Office.

Endorsed as follows: Apr. 20th, 1787. Abner Cloud, 8,000 acres.

565 *Abner Cloud*, 8,000 *Acres.*

Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that in conformity with a survey made on the 27th day of July, one thousand — hundred and 85, by virtue of land office treasury warrant No. 21339, issued 13th day of Dec., 1783, there is granted by the said Commonwealth unto Abner Cloud, ass'ee of Solomon Smith, a certain tract or parcel of land containing eight thousand acres, lying and being in the county of Harrison on the waters of Elk river, adjoining on the northwest of his survey No. 3, which is on the waters of Tyger's Valley river, and bounded as followeth, to wit: Beginning at a black oak, corner to his said survey, and running thence, running by a line of the same, S. 40° W. 667 poles to a poplar; No. 50° W. 1,920 poles, crossing said waters, to a white
566 oak; No. 40° E. 667 poles to a poplar; S. 50° E. 1,920 poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to said Abner Cloud and his heirs forever.

In witness whereof the said Edmund Randolph, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 20th day of April, in the year of our Lord one thousand — hundred and 87, and the Commonwealth — 11th.

[SEAL.]

EDMUND RANDOLPH.

LAND OFFICE, RICHMOND, VA.

The foregoing is a true copy from the records.

Witness my hand and seal of office this 10th day of March, 1887.

[Seal Land Office, Virginia.]

J. A. WINGFIELD,
Reg. Land Office.

Endorsed as follows: Abner Cloud. Apr. 20, 1787. 8,000 acres.

567 *H. Phillips*, 50,029 *Acres.*

Rob't Brooke, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know yea that, in conformity with a survey made on the 16th day of January, one thousand seven hundred and 95, by virtue of land office treasury warrant No. 1007, issued the 23rd day of Dec., 1794, there is granted by the said Commonwealth unto Henry Phillips, ass'ee of James Patton, ass'ee of Benj. Reeder, for Rob't Patton, a certain tract or parcel of land containing fifty thousand and twenty-nine (50,059) acres, lying and being in the county of Randolph, on the waters of Elk river, a branch of the Great Kanawha, adjoining lands of Benjamin Reeder and Frederick Reed, and bounded as fol-

loweth, to wit: Beginning at a poplar, corner to Benjamin
568 Reeder's land, and running with lines of three of his surveys S. 50° E. 2,600 poles to pointers, corner to Frederih Reed's survey thence N. 40° E. 3,200 poles to a poplar; thence N. 50° W. 2,600 poles to a white oak; thence S. 40° W. 3,200 poles to the beginning; but it is always to be understood that the survey upon which this grant is founded includes nineteen hundred acres, which having a preferance by law to the warrants and rights upon which this grant is founded, liberty is reserved that the same shall be firm and valid and may be carried into grant or grants, and this grant shall be no bar in either law or equity to the conformation of the title or titles to the same, as before mentioned and reserved, with its ap-urtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Henry Phillips, except as before excepted.

In witness whereof the said Rob't Brooke, Esquire, Gove-nor of the Commonwealth of Virginia, hath hereunto set his hand
[SEAL.] and caused the lesser seal of the Commonwealth to be affixed, at Richmond, on the 7 day of September, in the year of our Lord one thousand seven hundred and 95, and of the Commonwealth the 20th.

ROBERT BROOKE.

569 LAND OFFICE, RICHMOND, VA.

The foregoing is a true copy from the records.

Witness my hand and seal of office this 9th day of March, 1887.

[Seal Land Office, Virginia.]

J. A. WINGFIELD,
Reg. Land Office.

Endorsed as follows: Henry Philips, 50,029 acres. Randolph Co. Book 32, page 351.

570 *Benj. Reeder*, 5,732 *Acres.*

Rob't Brook, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that in conformity with a survey made on the 20th day of November, one thousand seven hundred and 93, by virtue of land office treasury warrant No. 19757, issued the 7th day of Oct., 1783, there is granted by the said Commonwealth unto Benjamin Reeder a certain tract or parcel of land containing five thousand one hundred and thirty-two —, lying and being in the county of Randolph, in the forks of a creek what heads opposite the head of the right-hand fork of Little Kanawha and em-ties into the Big Kanawha, and extending up both forks and down the creek, and is bounded as followeth, to wit: Beginning at a beech, corner to Wm. Stewart, S. 40° W. 1,600 poles to a hickory, S. 50° E. 513½
571 poles to a white oak, N. 40° E. 1,600 poles to pointers, N. 50° W. 513½ poles to the beginning, with its appurtenances; to

have and to hold the said tract or parcel of land, with its appurtenances, to said Benjamin Reeder and his heirs forever.

In witness whereof the said Rob't Brooke, Esquire, Gov-
[SEAL.] ernor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 24th day of August, in the year of our Lord one thousand seven hundred and 95, and of the Commonwealth the 20th.

ROB'T BROOKE.

LAND OFFICE, RICHMOND, VIRGINIA.

The foregoing is a true copy from the record.
Witness my hand and seal of office this 9th day of March, 1887.
[Seal Land Office, Virginia.]

J. A. WINGFIELD,
Reg. Land Office.

Endorsed as follows: Benjamin Reeder, 5,732 acres. Randolph Co. Book 33, page 109.

572 *Robert Brooke*, 5,000 *Acres.*

Robert Brooke, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that in conformity with a survey made on the 22nd day of November, one thousand seven hundred and 93, by virtue of land office treasury warrant No. 21948, issued the 24th day of December, 1783, there is granted by the said Commonwealth unto Henry Diggs & Thomas Barron, assignees of Benjamin Reeder, a certain tract or parcel of land containing five thousand acres, lying and being in the county of Randolph, on the Back Fork of Holly, adjoining land surveyed for said Benjamin Reeder and the southeast side of said land, and is bounded as followeth, to wit: Beginning at a white oak, corner to said Reeder, and runneth S. 50° E. 500 poles to pointers and corners to said Reeder with his line N. 40° E. 1,600 poles to a stake; thence N. 50° W. 500 poles to pointers;
573 thence S. 40° W. 1,600 poles to the beginning, with its appurtenances; to have and hold the said tract or parcel of land, with its appurtenances, to the said Henry Diggs and Thomas Barron and their heirs forever.

In witness whereof the said Robert Brooke, Esquire, Gove-nor of the Commonwealth of Virginia, hath hereunto set his hand
[SEAL.] and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 26th day of August, in the year of our Lord one thousand seven hundred and 95, and of the Commonwealth the twentieth.

ROBERT BROOK.

LAND OFFICE, RICHMOND, VIRGINIA.

The foregoing is a true copy from the records.

Witness my hand & seal of this office this 10th day of March, 1887.

[Seal Land Office, Virginia.]

J. A. WINGFIELD,
Reg. Land Office.

Endorsed as follows: ——

574 *F. Fally*, 30,000 *Acres.*

James Wood, Esquire, lieutenant governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that by virtue of seven land office treasury warrants, numbers 19936, 20837 & 21274, 21269, 19608, 19609, and 19610, there is granted by the said Commonwealth unto Frederick Falley a certain tract or parcel of land containing 30,000 acres by survey bearing date the 5th day of October, 1793, lying and being in the county of Harrison, on the waters of the Glady Fork of the Little Kanawha river, a branch of the Ohio, and bounded as follows, to wit: Beginning at a poplar and hickory, corner to a survey made for Josep Spencer, and running thence S. 55° E. 11.78 poles to a white oak, N. 35° E. 636 poles to a poplar, S. 55° E. 1,646 poles to a chestnut tree, S. 40¼° W. 2,561 poles to a maple; thence by a line of Isaac Sidman N. 55° W. 500 poles to a hickory; thence by a line of Cornelius Austin N. 35° E. 400 poles to a white oak, N. 55° W. 912
575 poles to a line of Dr. James Stratton's; thence by said line N. 35° E. 560 poles to a hickory; thence by another of Stratton's lines N. 55° W. 1,478 poles; thence by *by* a line of said Spencer's N. 52° E. 1,006 poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Frederick Falley and his heirs forever.

In witness whereof the said James Wood, Esquire, lieutenant governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 25th day of June, A. D. 1794, and of the Commonwealth the 18th.

JAMES WOOD.

LAND OFFICE, RICHMOND, VA.

The foregoing is a true copy from the records.

Witness my hand and seal of office this 10th day of February, 1887.

[Seal Virginia Land Office.]

J. A. WINGFIELD,
Reg. Land Office.

Endorsed as follows: Frederick Falley, 30,000 acres.

576 *Davenport, 30,000 Acres.*

James Wood, Esquire, lieutenant governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that by virtue of land office treasury warrants numbers 20033, 20029, 20024, 20006, 20007, & 20008, issued the 17th day of October, 1783, there is granted by the said Commonwealth unto John Devenport, Isaac Lockwood, James Davenport, Silas Hoit, Smith Weed, and Thaddeus Hoit a certain tract or parcel of land containing 30,000 acres by survey bearing date the 9th day of October, 1793, lying and being in the county of Harrison, on the waters of the Glady Fork of the Little Kanawha river, a branch of the Ohio, and bounded as followeth, to wit: Beginning at a chestnut tree, a corner to a survey made for Frederick Falley, and running thence S. 55° E. 1,766 poles to a maple; S. 35° W. 2,550 poles to a poplar, corner to land surveyed for William Stewart; thence by lines
577 of said Stewart, Robert Lylburn, and Isaac Sidman N. 55° W. 2,000 poles to the maple, corner to said Falley's survey; thence with the reverse of a line of the same N. 40¼° E. 2,561 poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said John Davenport, Isaac Lockwood, James Davenport, Silas Hoit, Smith Weed, and Thaddeus Hoit and their heirs forever.

In witness whereof the said James Wood, Esquire, lieutenant governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the 25th day of June, A. D. 1794, and of the Commonwealth the 18th.

JAMES WOOD.

LAND OFFICE, RICHMOND, VA.

The foregoing is a true copy from the records.

Witness my hand and seal of office this 10th day of February, 1887.

[Seal Virginia Land Office.]

J. A. WINGFIELD,
Reg. Land Office.

Endorsed as follows: John Davenport & others, 3,000 acres. Harrison Co. Book —.

578 No. 1.

No. 1.	1,000 acres.
Standish Ford.	

MARCH THE 11TH, 1793.

Surveyed for Standish Ford, as[s] of James Murry & John Lewis, 1,000 acres land, in Randolph county, on a land office treasury war-

rant, 1,000 a^{s}, No. 20594, dated the 10th day Nov^{r}., 1783, on the left-hand fork of Buckhannon river, it being the east fork of s^{d} river, & bounded as followeth, viz: Beginning at a maple in the forks of s^{d} river & about equal distance from each of the said forks & running thence S. 245 p^{s} to a sugar, corner to his second survey; then by a line of said survey E. 653½ p^{s} to a maple, corner to his 2^{o}, 15, & 16th surveys; thence by a line of his 15th N. 245 p^{s}, crossing the said east fork, to a poplar, another corner to the s^{d} 15th survey; thence W. 653½ p^{s}, crossing s^{d} fork, to the beginning.

JOHN JACKSON, *As't.*
EDW. JACKSON, *S. R. C.*

Platted by a scale of 200 poles to an inch.

STATE OF WEST VIRGINIA:

RANDOLPH COUNTY COURT
579 CLERK'S OFFICE, *March 11th*, 1887.

I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: 1. Copy of survey of 1,000 acres made for Standish Ford. Clerk's fee, $1.25.

580 No. 1.

Dr. Thomas Bond Survey No. 1.

20TH MAY, 1785.

Surveyed for Doctor Thomas Bond, ass'ee of David Anderson, 2,000 acres of land, in Harrison county, by virtue of a land office treasury warrant, No. 21846, dated 24th December, 1783, about half a mile above the mouth of the first left-hand fork of Buckhannon river, on waters that empty into the west side of said river, bounded as followeth, viz: Beginning at a sugar tree standing eight hundred poles west from the river aforesaid and running thence south 400 poles to a white oak and poplar, west 800 poles to a poplar, north 400 poles to a black oak, east 800 poles to the beginning.

By a scale of 200 poles — an inch; no variation.

HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

581 I, James Monroe, clerk of the county court of Harrison county, West Virginia, do certify that the foregoing is a true copy of the above-styled survey and found upon record in my office.

Given under my hand and the seal of said county court this 28th day of April, 1887.

[Seal County Court, Harrison County, West Virginia.]

JAMES MONROE, *Clerk.*

Endorsed as follows: Doctor Thomas Bond survey No. 1.

582 *Doctor Thomas Bond Survey No. "2."*

20TH MAY, 1785.

Survey for Doctor Thomas Bond, ass'ee of David Anderson, 2,000 acres of land, in Harrison county, by virture of a land office treasury warrant, No. 21845, dated 24th December, 1783, on waters that empty into the west side of Buckhannon river, adjoining above his survey No. "1," bounded as followeth, viz: Beginning at a white oak and poplar, corner to said survey, and running thence south 400 poles to a linn, west 800 poles to a white oak, north 400 poles to a poplar, corner to said survey; thence by a line of the same east 800 poles to the beginning.

By a scale of 200 poles to the inch; no variation.

HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

583 I, James Monroe, clerk of the county court of Harrison county, West Virginia, do certify that the foregoing is a true copy of the above-styled survey and found upon record in my office.

Given under my hand and the seal of said county court this 28th day of April, 1887.

[Seal County Court, Harrison County, West Virginia.]

JAMES MONROE, *Clerk.*

Endorsed as follows: Doctor Thomas Bond survey No. "2."

584 2.

No. 2. 1,000 acres.

Standish Ford.

MARCH THE 11TH, 1789.

Surveyed for Standish Ford, ass'ee of Jas. Murry & John Lewis, 1,000 acres of land, in Randolph county, on a land office treasury warrant of 1,000 acres, No. 20595, dated the 10th of Nov., 1783, on both sides of a large run that comes into the east of s'd river, & on the west side thereof about 100 p'r above the fork, & bounded as followeth, viz: Beginning at a sugar tree, it being his 11th survey, & running thence S. 245 p'r to a poplar, corner to his 3d survey, & by a line of s'd survey E. 653½ p'r to a sugar, corner to his 3d, 16- & 17th survey, & by a line of his 16th N. 245½ p'r to a maple, corner to his 1st & 16th surveys; thence by a line of his first W. 653½ p'r to the beginning.

JNO. JACKSON, *Ass't.*
EDW. JACKSON, *S. R. C.*

Platted by a scale of 200 p'r to an inch.

STATE OF WEST VIRGINIA:

RANDOLPH COUNTY COURT
585 CLERK'S OFFICE, *March 11th*, 1887.

I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct —, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: 2. Copy of survey of 1,000 acres made for Standish Ford. Clerk's fee, $1.25.

586 3.

No. 3. 1,000 acres.

Standish Ford.

MARCH 11TH, 1793.

Surveyed for Standish Ford, as^{ee} of James Murry & John Lewis, 1,000 acres of land, in Randolph county, on a land office treasury warrant of No. 20610, dated the 10th of Nov^{r}., 1783, adjoining & on the south side of s^{d} Ford's 2^{d} survey & on the middle fork of Buckhannon river, & bounded as followeth, viz: Beginning at a poplar the S. W. corner of the 2^{d} survey & running thence S. 245 p^{s} to a maple, E. 653½ p^{s} to a lynn, corner to his 17th & 18th survey-, & by a line of his 17th N. 245 p^{s} to a sugar corner to his 2^{d}, 16, & 17th survey-; thence by a line of his 2^{d} W. 653½ p^{s} to the beginning.

JOHN JACKSON, *As't.*
ED^{W}. JACKSON, *S. R. C.*

Platted by a scale of 200 p^{s} to an inch.

STATE OF WEST VIRGINIA:

RANDOLPH COUNTY COURT
CLERK'S OFFICE, *March 11th*, 1887.

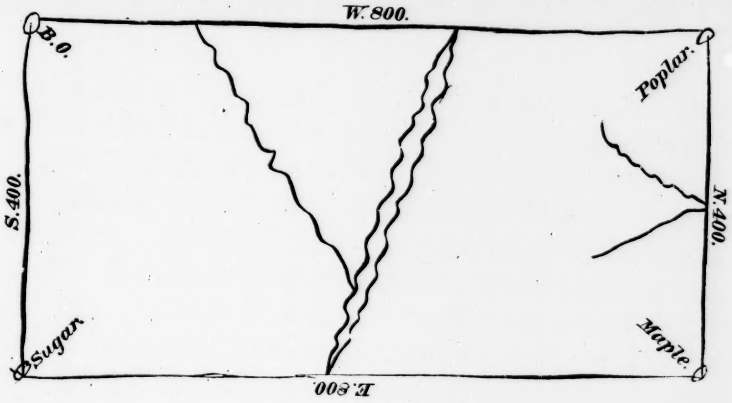
587 I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

JAMES D. WILSON, *Clerk.*

Endorsed as follows: 3. Copy of survey of 1,000 acres made for Standish Ford. Clerk's fee, $1.25.

588 No. 4.

Dr. Thomas Bond Survey No. 4. 2,000 Acres.



20TH MAY, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 2,000 acres of land in Harrison county, by virture of a land office treasury warrant, No. 21714, dated 24th December, 1783, on watters that empty into the west side of Buckhannon river, adjoining above his survey No. 3, bounded as follows, viz: Beginning at sugar tree, corner to said survey, and running thence south 400 poles to a black oak, west 800 poles to a poplar, north 400 poles to a maple, corner to said survey; thence by a line of the same east 800 poles to the beginning.

By a scale of 200 poles to the inch; no variation.

HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.
Teste: JAMES MONROE, *Clerk.*

589 Endorsed as follows: (1784–'85. 609.) Survey No. 4, made May 20th, 1785, for Dr. Thomas Bond. 2,000 acres. Copy. Clerk's fee, 50c., ch'd.

590 4.

No. 4. 1,000 acres.

Standish Ford.

MARCH 11TH, 1793.

Surveyed for Standish Ford, asee of James Murry & John Lewis, 1,000 acres of land in Randolph county, part of a land office treas-

ury warrant of 2,000 acres, No. 20683, dated the 10th of Nov^{r}., 1783, adjoining land on the west side of his 19th survey & 245 p^{s} south of his 3^{d}, and bounded as followeth, viz: Beginning at a lyn the S. W. corner of his 18th survey, & then west 653½ p^{s} to a sugar, S. 245 p^{s} to a sugar, corner to his 5th survey; E. 653½ p^{s}, crossing the middle fork of Buckhannan river, to a gum, corner to his 5, 19, & 20th surveys; thence by a line of his 19th N. 245 p^{s}, crossing s^{d} fork, to the beginning.

JOHN JACKSON, *As't.*
ED^{W}. JACKSON, *S. R. C.*

Platted by a scale of 200 p^{s} to an inch.

STATE OF WEST VIRGINIA:

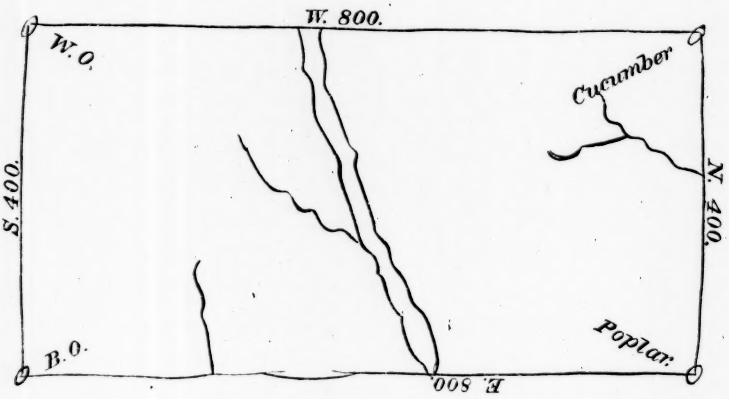
RANDOLPH COUNTY COURT
591 CLERK'S OFFICE, *March 11th*, 1887.

I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: 4. Copy of survey of 1,000 acres made for Standish Ford. Clerk's fee, $1.25.

592 No. 5.



20TH MAY, 1785.

Surveyed for Doct. Thomas Bond, ass'te of David Anderson, 2,000 acres of land in Harrison county, by virtue of a land office treasury warrent, No. 21779, dated 24th December, 1783, on the waters that empty into the west side of Buckhannon river, adjoining above his survey No. 4, bounded as follows, viz: Beginning at a black oak, corner to said survey, and running thence south 400 poles to a white oak, west 800 poles to a cucumber tree, north 400 poles to a poplar,

corner to his said *said;* thence by a line of the same east 800 poles, to the beginning.

HENRY FINK, *Ass't.*
WM. HAYMOND, *S. H. C.*

By a scale — 200 poles to an inch; no variation.
A copy.
Teste: JAMES MONROE, *Clerk.*

593 Endorsed as follows: (1784–'85. 610.) Survey No. 5, made May 20th, 1785, for Dr. Thomas Bond. 2,000 acres. Copy. Clerk's fee, 50c., ch'd.

594 5.

No. 5. 1,000 acres.

Standish Ford.

MARCH 11TH, 1793.

Surveyed for Standish Ford, as^{ee} of James Murry & John Lewis, 1,000 a^{s} of land in Randolph county, in part of a land office treasury warrant of 2,000 acres, No. 20683, dated the 10th of Nov^{r}., 1783, & joining on the south side of his 4th survey & on both sides of the middle fork of Buckhannon river, & bounded as followeth, viz: Beginning at a gum, the S. E. corner of his 4th survey, & running by a line of the same W. 653½ p^{s}, crossing the middle fork, to a sugar, another corner of s^{d} survey; thence S. 245 p^{s} to a poplar, corner to his 6th survey, & by a line thereof E. 653½ p^{s}, crossing s^{d} fork, to a maple, corner to his 6, 20, & 21st surveys; thence by a line of his 20th N. 245 p^{s} to the beginning.

JOHN JACKSON, *As't.*
ED^{w}. JACKSON, *S. R. C.*

Platted by a scale of 200 p^{s} to an inch.

595 STATE OF WEST VIRGINIA:

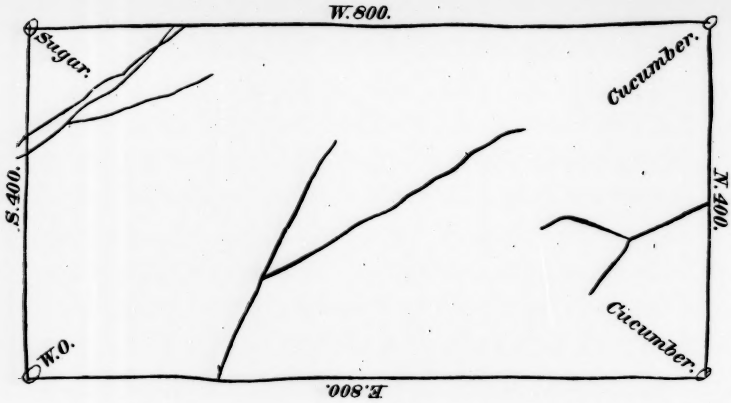
RANDOLPH COUNTY COURT
CLERK'S OFFICE, *March 11th*, 1887.

I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: 5. Copy of survey of 1,000 acres made for Standish Ford. Clerk's fee, $1.25.

596 No. 6.



20TH MAY, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 2,000 acres of land, in Harrison county, by virtue of land office treasury warrant No. 21821, dated 24th December, 1783, on watters that empty into the west side of Buckhannon river, adjoining above his survey No. 5, bounded as followeth, viz: Beginning at a white oak, corner to said survey, and running thence south 400 poles to a sugar tree, west 800 poles to a cucumber tree, north 400 poles to a cucumber tree, corner to his said survey; thence by a line of the same east 800 poles to the beginning.

No variation.

HENRY FINK, *Ass't to*
WM. HAYMOND.

A copy.
Teste: JAMES MONROE, *Clerk.*

597 Endorsed as follows: (1784–'85. 611.) Survey No. 6, made May 20th, 1785, for Dr. Thomas Bond. 2,000 acres. Copy. Clerk's fee, 50c., ch'd.

598 6.

No. 6. 1,000 acres.

Standish Ford.

MARCH THE 11TH, 1793.

Surveyed for Standish Ford, ass^ee^ of James Murry & John Lewis, 1,000 acres of land, in Randolph county, on part of a land office treasury warrant of 2,000 acres, No. 20673, dated the 10th of Nov^r^.,

1783, adjoining & on the south side of his 5th survey & on both sides of Buckhannon river, & bounded as followeth, viz: Beginning at a poplar, the S. W. corner of his 5th survey, & running thence S. 653½ p^s to a lyn, to his 7th & 21st survey-, & by a line of his 21st N. 245 p^s to a maple, corner to his 5, 20, & 21st; thence by a line of the 5th W. 653½ p^s to the beginning.

JOHN JACKSON, *As't.*
ED^W. JACKSON, *S. R. C.*

Platted by a scale of 200 p^s to an inch.

STATE OF WEST VIRGINIA:

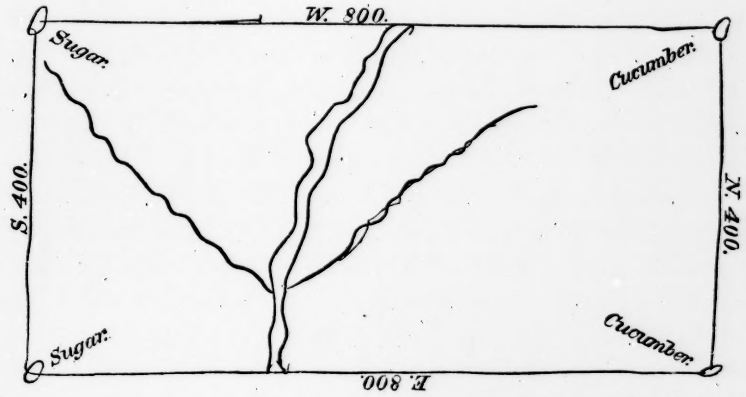
RANDOLPH COUNTY COURT
CLERK'S OFFICE, *March 11th*, 1887.

599 I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: 6. Copy of survey of 1,000 acres made for Standish Ford. Clerk's fee, $1.25.

600 No. 7.



20TH MAY, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 2,000 acres of land, in Harrison county, by virtue of a land office treasury warrent, No. 21844, dated 24th December, 1783, on a right-hand branch of Buckhannon river, above his survey No. 6, bounded as followeth, viz: Beginning at a sugar tree, corner to said survey, and running thence south 400 poles to a sugar tree, west 800 poles to a cucumber tree, north 400 poles to a cucumber tree, corner to his said survey; thence by a line of the same east 800 poles to the beginning.

No variation.

HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.
Teste:

JAMES MONROE, *Clerk.*

601 Endorsed as follows: (1784–'85. 612.) Survey No. 7, made May 20th, 1785, for Dr. Thomas Bond. 2,000 acres. Copy. Clerk's fee, 50c., ch'd.

602 7.

35,062 acres.

David Lynn.

NOV'R 3D, 1794.

Surveyed for David Lynn 35,062 acres of land in Randolph county, by virtue of the following land office treasury warrant-: 25,000 acres, No. 19232, issued to John Wisigar the 10th of Sept., 1783; 5,000 acres & 2,000 acres, both issued to Wm. Waddy the 14th of Dec'r., 1781, & No-. 9873 & 9883; 2,500 acres, No. 10623, issued to John Talbart the 5th of January, 1782; 500 acres, No. 694, issued to James Hart the 15th of October, 1779, & 62 acres, as part of 20,000 a's, No. 18198, issued to Jno. Strother the 30th of July, 1783,
603 situated on the waters of Elk river, a branch of the Big Kanawha, & bounded as followeth, viz: Beginning at a poplar & running thence N. 35 E. 2,550 poles to a maple, S. 55 E. 2,200 p's to a chestnut; thence S. 35 W. 2,550 p's to pointers, 3 trees, N. 55 W. 2,200 — to the beginning.

JNO. JACKSON, *As.*
EDW. JACKSON, *S. R. C.*

Platted by a scale of 400 p's to an inch.

STATE OF WEST VIRGINIA:

RANDOLPH COUNTY COURT
CLERK'S OFFICE, *March 11th*, 1887.

I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: Copy of survey of 35,062 acres made for David Lynn. Clerk's fee, $1.25.

604 7.

No. 7. 1,000 acres.

Standish Ford.

MARCH 11TH, 1793.

Surveyed for Standish Ford, as'ee of James Murry & John Lewis, 1,000 acres of land, in Randolph county, on part of a land office

treasury warrant of 2,000 acres, No. 20673, dated the 10th of Nov'r, 1783, adjoining & on the south side of his survey N. C., & on both sides of the middle fork of Buckhannon river, & bounded as followeth, viz: Beginning at a lyn-, the S. W. corner of his 6th survey, and running thence S. 245 p^s to a poplar, corner to his 8th survey, & by a line thereof E. 653½ p^s to a poplar, another corner of s^d survey, & his 22^d; thence N. 245 p^s, crossing the middle fork to a beech, corner to 6 & 21st surveys, & then by a line of his 6th W. 653½ p^s, crossing s^d fork, to the beginning.

JOHN JACKSON, *A's't.*
ED^W. JACKSON, *S. R. C.*

Platted by a scale of 200 p^s to an inch.

STATE OF WEST VIRGINIA:

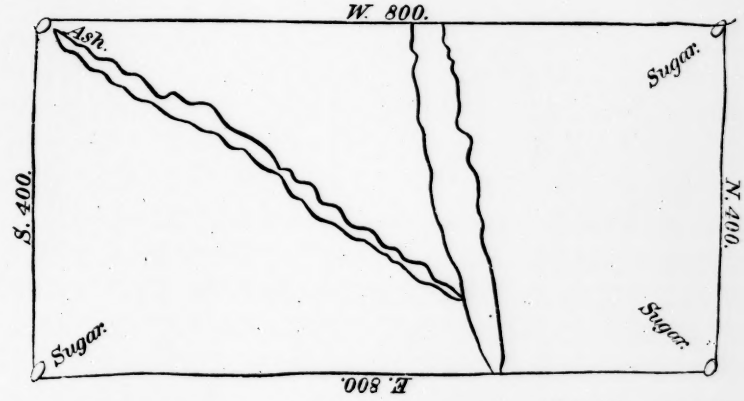
RANDOLPH COUNTY COURT
605 CLERK'S OFFICE, *March 11th*, 1887.

I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: Copy of survey of 1,000 acres made for Standish Ford. Clerk's fee, $1.25.

606 No. 8.



20TH MAY, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 2,000 acres of land, in Harrison county, by virtue of a land office treasury warrant, No. 21852, dated 24th December, 1783, on Buckhannon river, adjoining on the east side of his survey No. 7, bounded as followeth, viz: Beginning at a sugar, corner to said survey, and running thence east 800 poles, crossing said river, to a sugar tree; south 400 poles to an ash; west 800 poles, crossing the river, to a

sugar tree, corner to his said survey; thence by a line of the same north 400 poles to the beginning.

No variation.

HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.
Teste: JAMES MONROE, *Clerk.*

607 Endorsed as follows: (1784–'85. 613.) Survey No. 8, made May 20th, 1785, for Dr. Thomas Bond. 2,000 acres. Copy. Clerk's fee, 50c., ch'd.

608 8.

No. 8. 1,000 acres.

Standish Ford.

MARCH 11TH, 1793.

Surveyed for Standish Ford, as'ee of James Murry & John Lewis, 1,000 acres of land, in part of a land office treasury warrant of 2,000 acres, No. 20682, dated the 10th of Nov^{r}., 1783, adjoining & on the S. side of his 7 & 17th survey-, which lies on both sides of the middle fork of Buckhannon river, & bounded as followeth, viz: Beginning at a poplar, the S. W. corner to his 7th survey, & running thence S. 245 p^{s} to a poplar, corner to his 9th survey, & by a line thereof E. 653½ p^{s} to a black oak, corner — his 9, 22, & 23^{d} survey-, & by a line of his 22^{d} N. 245 p^{s} to a poplar, corner to his 7 & 22^{d}; thence by a line of his 7th W. 653½ p^{s} to the beginning.

JNO. JACKSON, *As't.*
ED^{w}. JACKSON, *S. R. C.*

Platted by a scale.

STATE OF WEST VIRGINIA:

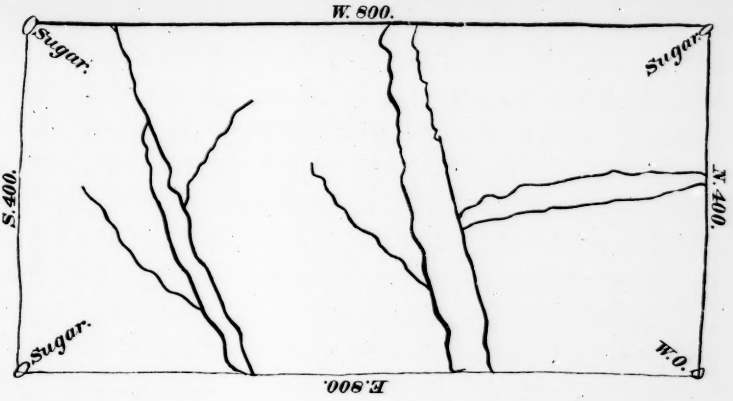
RANDOLPH COUNTY COURT CLERK'S OFFICE.

609 I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: Copy of survey of 1,000 acres made for Standish Ford. Clerk's fee, $1.25.

610 No. 9.



20TH MAY, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 2,000 acres of land, in Harrison county, by virtue of a land office treasury warrent, No. 21769, dated 24th December, 1783, on both sides of Buckhannon river, adjoining below his survey No. 8, bounded as followeth, viz: Beginning at a sugar tree, corner to said survey, thence by a line of the same west 800 poles to a sugar tree, north 400 poles, by a line of his survey No. 6, to a white oak, east 800 poles to a sugar tree, south 400 poles to the beginning.

No variation.

HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.
Teste: JAMES MONROE, *Clerk.*

611 Endorsed as follows: 614. Survey No. 9, made May 20th, 1785, for Dr. Thomas Bond. 2,000 acres. Clerk's fee, 50c., ch'd.

612 9.

No. 9.	1,000 acres.
Standish Ford.	

MARCH 12TH, 1793.

Surveyed for Standish Ford, as^{ee} of James Murry & John Lewis, 1,000 acres of land, in Randolph county, on part of a land office treasury warrant of 2,000 acres, No. 20682, dated the 10th of Nov^{r}.,

1783, adjoining & on the south side of his 8th survey & on both sides of the middle fork of Buckhannon river & bounded as followeth, viz: Beginning at a maple, the S. W. corner of his 8th survey, & running thence S. 245 p^s to a black oak, corner of his 10th survey, & by a line thereof E. 653½ p^s to a beech, to his 10th, 23, & 24th survey- & by a line of his 23^d survey N. 245 p^s to a black oak, corner to his 8, 22, & 23^d —; thence by a line of the 8th W. 653½ p^s to the beginning.

JNO. JACKSON, *As't.*
ED^w. JACKSON, *S. R. C.*

Platted by a scale of 200 p^s to an inch.

STATE OF WEST VIRGINIA:

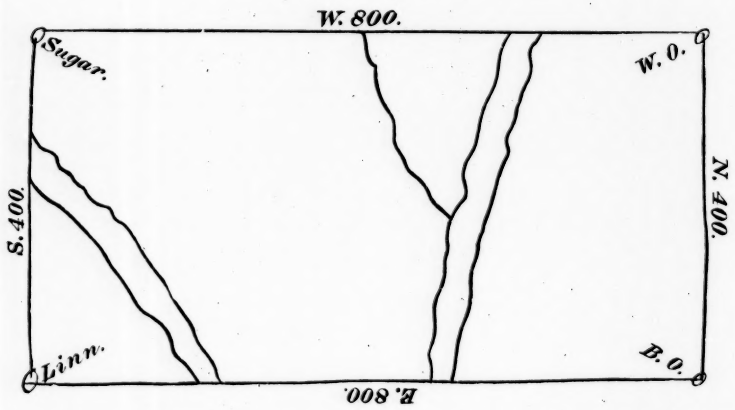
613 RANDOLPH COUNTY COURT
CLERK'S OFFICE, *March 11th*, 1887.

I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: Copy of survey of 1,000 acres made for Standish ford. Clerk's fee, $1.25.

614 No. 10.



20TH MAY, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 2,000 acres of land, in Harrison county, by virtue of a land office treasury warrant, No. 21865, dated 24th December, 1783, on both sides of Buckhannon river, adjoining below his survey No. 9, bounded as followeth, viz: Beginning at a sugar tree, corner to said survey, then by a line of the same west 800 poles to a white oak, north 400 poles

to a line of his survey No. 5, to a black oak, east 800 poles to a linn, south 400 poles to the beginning.

No variation.

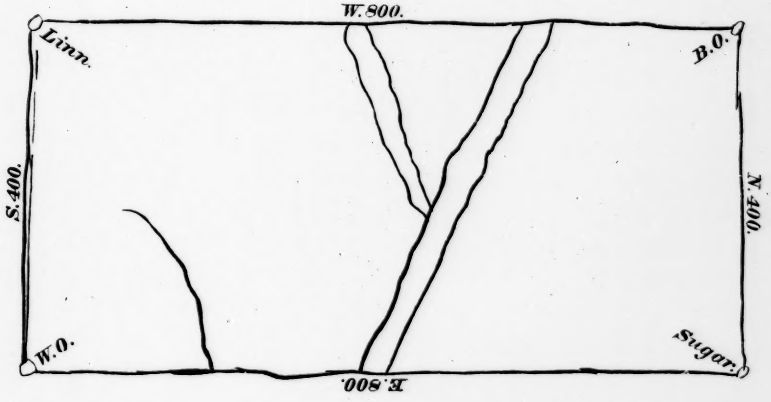
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.
Teste:

JAMES MONROE, *Clerk.*

615 Endorsed as follows: 615. Survey No. 10, made May 10th, 1785, for Dr. Thomas Bond. 2,000 acres. Copy. Clerk's fee, 50c. ch'd.

616 No. 11.



20TH MAY, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 2,000 acres of land, in Harrison county, by virtue of a land office treasury warrent, No. 21887, dated 24th December, 1783, on both sides of Buckhannon river, adjoining below his survey No. 10, bounded as followeth, viz: Beginning at a linn, corner to said survey, thence by a line of the same west 800 poles to a black oak, north 400 poles, by a line of his survey No. 4, to a sugar tree; east 800 poles to a white oak, south 400 poles to the beginning.

No variation.

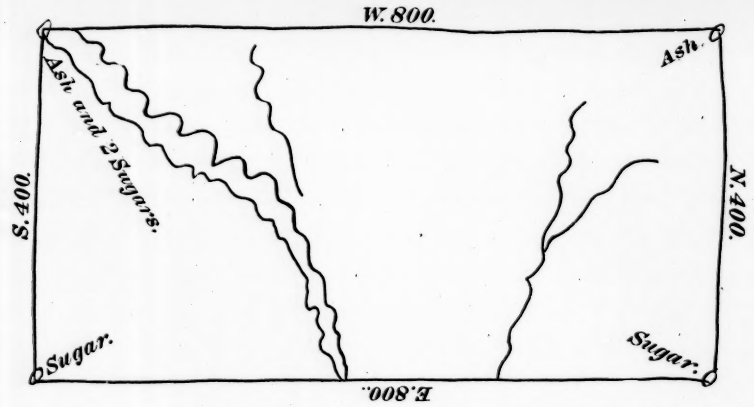
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.
Teste:

JAMES MONROE, *Clerk.*

617 Endorsed as follows: (616.) Survey No. 11, made May 20th, 1785, for Dr. Thomas Bond. 2,000 acres. Copy. Clerk's fee, 50c., ch'd.

618 No. 14.



20TH MAY, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 2,000 acres of land, in Harrison county, by virtue of a land office treasury warrant, No. 21710, dated 24th December, 1783, on a left-hand branch of Buckhannon river, adjoining on the east of his survey No. 8, bounded as followeth, viz: Beginning at a sugar tree, corner to said survey, and running thence east 800 poles to a sugar tree, south 400 poles to an ash & two sugar trees, west 800 poles to an ash, corner to his said survey; thence, by a line of the same, north 400 poles to the beginning.

HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.
Teste: JAMES MONROE, *Clerk.*

619 Endorsed as follows: 619. Survey No. 14, made May 20th, 1785, for Dr. Thomas Bond. 2,000 acres. Copy. Clerk's fee, 50c., ch'd.

620 15.

No. 15. 1,000 acres.

Standish Ford.

MARCH 12TH, 1793.

Surveyed for Standish Ford, as^{ee} of James Murry & John Lewis, 1,000 acres of land, in Randolph county, on a land office treasury warrant of — acres, No. 20611, dated the 10th of Nov^{r}., 1783, adjoining & on the east side of his survey No. 1, & on both sides of the east

fork of Buckhannon river, & bounded as followeth, viz: Beginning at a poplar, the N. E. corner of his 1st survey, & running by a line of s[d] survey S. 245 p[s] to a maple, corner to his 1, 2, & 16th surveys, & by a line of his 16th E. 653½ p[s] to a sugar, corner to his 16, 30, & 31st; then by a line of his 30th N. 245 p[s] to a lyn-, another corner to his 30th; thence W. 653½ p[s] to the beginning.

JNO. JACKSON, *Ass't.*
ED[w]. JACKSON, *S. R. C.*

Platted by a scale of 200 p[s] to an inch.

STATE OF WEST VIRGINIA:

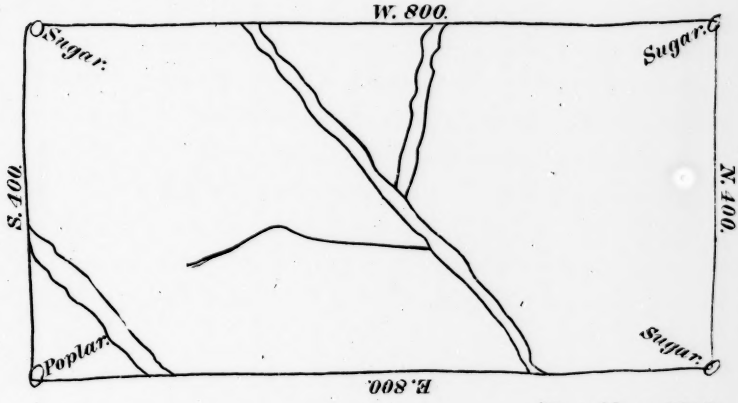
RANDOLPH COUNTY COURT
621 CLERK'S OFFICE, *March 11th*, 1887.

I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: Copy of survey of 1,000 acres made for Standish Ford. Clerk's fee, $1,25.

622 No. 15.



20TH MAY, 1785.

Surveyed for Doct. Thomas Bond, ass[ee] of David Anderson. 2,000 acres of land, in Harrison county, by virtue of a land office treasury warrent, No. 21713, dated 24th December, 1783, on a left-hand branch of Buckhannon river, adjoining below his survey No. 14, bounded as followeth, viz: Beginning at a sugar tree, corner to said survey, thence by a line of the same west 800 poles to a sugar tree; north 400 poles by a line of his survey No. 9 to a sugar tree; east 800 poles to a poplar, south 400 poles to the beginning.

No variation.

HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

623 Endorsed as follows: (620.) Survey No. 15, made May 20th, 1785, for Dr. Thomas Bond. 2,000 acres. Copy. Clerk's fee, 50c., ch'd.

624 16.

No. 16. 1,000 acres.

Standish Ford.

MARCH 13TH, 1793.

Surveyed for Standish Ford, as^{ee} of James Murry & John Lewis, 1,000 acres of land in Randolph county, on a land office treasury warrant of —, No. 20613, dated the 10th of Nov^{r}., 1783, adjoining & on the south side of his 15th survey & on both sides of the east fork of Buckhannon river, & bounded as followeth, viz: Beginning at a maple, the S. E. corner of his 1st survey, & running by a line of his 2^{d} S. 245 p^{s} to a sugar, corner to his 2, 3, & 17th surveys, & by a line of his 17th E. 653½ p^{s} to a gum, corner to his 17, 31, & 32^{d} surveys, & by a line of his 31 N. 245 p^{s} to a sugar, corner to his 15th, 30, & 31st; thence by a line of his 15th W. 653½ p^{s} to the beginning.

JOHN JACKSON, *As't.*
EDW. JACKSON, *S. R. C.*

STATE OF WEST VIRGINIA:

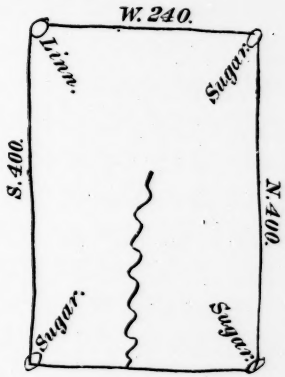
RANDOLPH COUNTY COURT
CLERK'S OFFICE, *March 11th*, 1887.

625 I, James D. Wilson, clerk of said court, do certify that the foregoing plat and survey is a true and correct copy, as appears from the record of surveys now on file in my office.

Teste: JAMES D. WILSON, *Clerk.*

Endorsed as follows: Copy of survey of 1,000 acres made for Standish Ford. Clerk's fee, $1.25.

626 No. 36.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 600 acres of land, in Harrison county, in part of a land office treasury warrent of 2,000 acres, No. 21691, dated 24th December, 1783, on watters that empty into west side of Buckhannon river, adjoining on the west his survey No. 35, bounded as followeth, viz: Beginning at a sugar tree, corner to said survey, thence by a line of the same south 400 poles to a linn, west 240 poles to a sugar tree, north 400 poles to a sugar tree on a line of his survey No. 7; thence by said line east 240 poles to the beginning.

No variation.

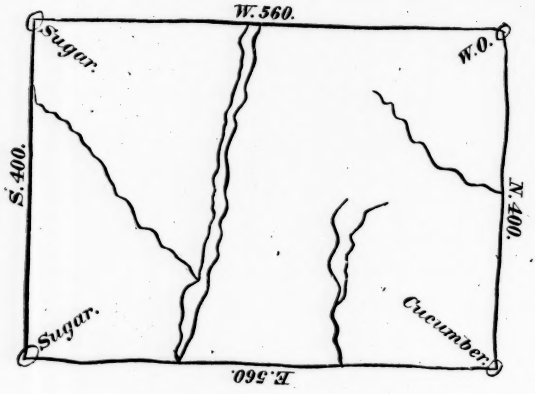
HENRY FINK, *Ass't to*
WM. HAYMOND *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

627 Endorsed as follows: (641.) Survey No. 36, made June 24th, 1785, for Dr. Thomas Bond. 600 acres. Copy. Clerk's fee, 50c., ch'd.

628 No. 37.



24 JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 1,400 acres of land, in Harrison county, in part of a land office treasury warrant of 2,000 acres, No. 21691, dated 24th December, 1783, on a right-hand branch of Buckhannon river, adjoining above his survey No. 7, bounded as followeth, viz: Beginning at a cucumber tree, corner to said survey, thence by a line of the same east 560 poles to a sugar tree, south 400 poles, by a line of his survey No. 36, to a sugar tree, west 560 poles to a white oak, north 400 poles to the beginning.

No variation.

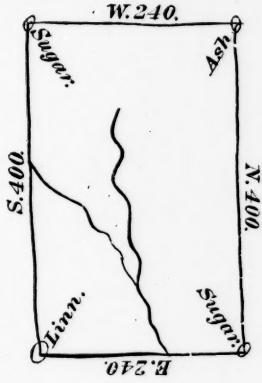
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

629 Endorsed as follows: (642.) Survey No. 37, made June 24th, 1785, for Dr. Thomas Bond. 1,400 acres. Copy. Clerk's fee, 50c., ch'd.

630 No. 38.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 600 acres of land, in Harrison county, in part of a land office treasury warrant of 2,000 acres, No. 21155, dated 1st December, 1783, on watters that empty into the west side of Buckhannon river, adjoining on the south of his survey No. 36, bounded as followeth, viz: Beginning at a sugar tree, corner to said survey, thence by a line of the same east 240 poles to a linn, south 400 poles, by a line of his survey No. 33, to a sugar tree, west 240 poles to an ash, north 400 poles to the beginning.

No variation.

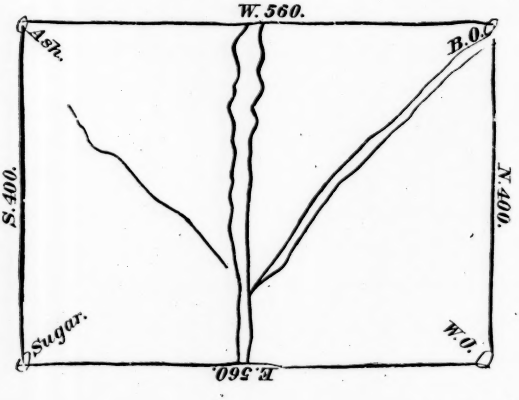
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

631 Endorsed as follows: (643.) Survey No. 38, made June 24th, 1785, for Dr. Thomas Bond. 600 acres. Copy. Clerk's fee, 50c., ch'd.

632 No. 39.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 1,400 acres of land, in Harrison county, in part of a land office treasury warrant of 2,000 acres, No. 21155, dated 1st December, 1783, on a right-hand branch of Buckhannon river, adjoining above his survey No. 37, bounded as followeth, viz: Beginning at a white oak, corner to said survey, thence by a line of the same east 560 poles to a sugar tree, south 400 poles, by a line of his survey No. 38, to an ash, west 560 poles to a black oak, north 400 poles to the beginning.

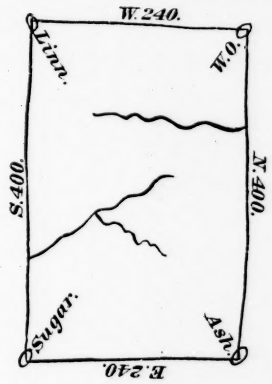
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

633 Endorsed as follows: (644.) Survey No. 39, made June 24th, 1785, for Dr. Thomas Bond. 1,400 acres. Copy. Clerk's fee, 50c., ch'd.

634 No. 40.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 600 acres of land, in Harrison county, in part of a land office treasury warrant of 2,000 acres, No. 21129, dated 1st December, 1783, on watters that empty into the west side of Buckhannon river, adjoining on the south his survey No. 38, bounded as followeth, viz: Beginning at an ash, corner to said survey, thence by a line of the same east 240 poles to a sugar tree, south 400 poles, by a line of his survey No. 31, to a linn, west 240 poles to a white oak, north 400 poles to the beginning.

No variation.

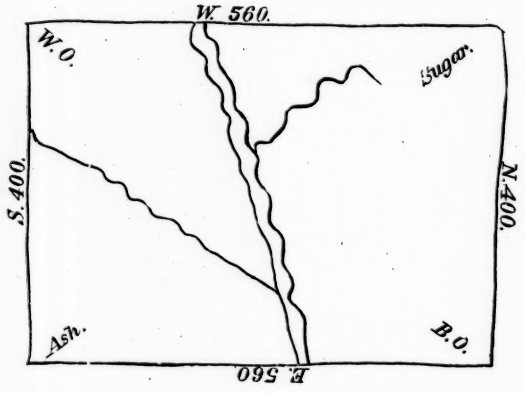
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

635 Endorsed as follows: (645.) Survey No. 40, made for Dr. Thomas Bond. 600 acres. Copy. Clerk's fee, 50c., ch'd.

636 No. 41.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 1,400 acres of land, in Harrison county, in part of a land office treasury warrant of 2,000 acres, No. 21129, dated 1st December, 1783, on a right-hand branch of Buckhannon river, adjoining above his survey No. 39, bounded as followeth, viz: Beginning at a black oak, corner to said survey, thence by a line of the same east 560 poles to an ash, south 400 poles, by a line of his survey No. 40, to a white oak, west 560 poles to a sugar tree, north 400 poles to the beginning.

No variation.

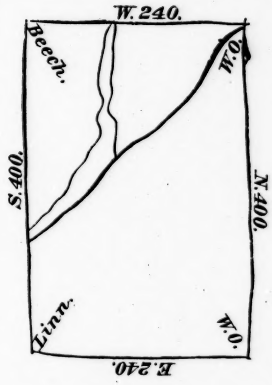
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

637 Endorsed as follows: (646.) Survey No. 41, made for Dr. Thomas Bond. 1,400 acres. Copy. Clerk's fee, 50c., ch'd.

638 No. 42.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 600 acres of land, in Harrison county, in part of a land office treasury warrant of 2,000 acres, No. 21140, dated 1st December, 1783, on a right-hand drain of Buckhannon river, adjoining on the south of his survey No. 40, bounded as followeth, viz: Beginning at a white oak, corner to said survey, thence by a line of the same east 240 poles to a linn, south 400 poles, by a line of his survey No. 29, to a beech, west 240 poles to a white oak, north 400 poles to the beginning.

No variation.

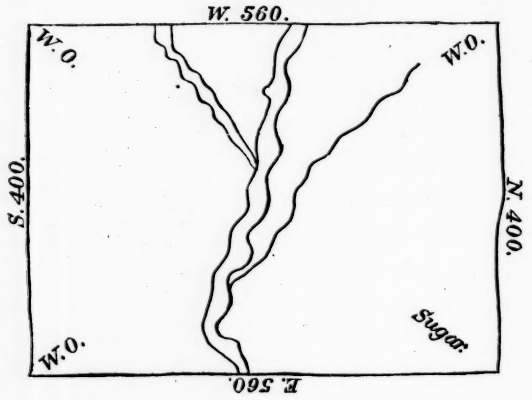
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

639 Endorsed as follows: (647.) Survey No. 42, made for Dr. Thomas Bond. 600 acres. Copy. Clerk's fee, 50c., ch'd.

640 No. 43.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 1,400 acres of land, in Harrison county, in part of a land office treasury warrent of 2,000 acres, No. 21140, dated 1st December, 1783, on a right-hand branch of Buckhannon river, adjoining above his survey No. 41, bounded as followeth, viz: Beginning at a sugar tree, corner to said survey, thence by a line of the same east 560 poles to a white oak, south 400 poles, by a line of his survey No. 42, to a white oak, west 560 poles to a white oak, north 400 poles to the beginning.

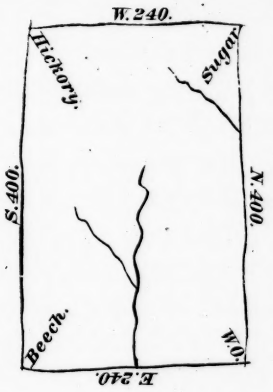
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

641 Endorsed as follows: (648.) Survey No. 43, made for Dr. Thomas Bond. 1,400 acres. Copy. Clerk's fee, 50c., ch'd.

642 No. 44.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 600 acres of land, in Harrison county, in part of a land office treasury warrant of 2,000 acres, No. 21097, dated 1st December, 1783, on a right-hand drain of Buckhannon river, adjoining on the south of his survey No. 42, bounded as followeth, viz: Beginning at a white oak, corner to said survey, thence by a line of the same east 240 poles to a beech, south 400 poles, by a line of his survey No. 27, to a hickory, west 240 poles to as ugar tree, north 400 poles to the beginning.

No variation.

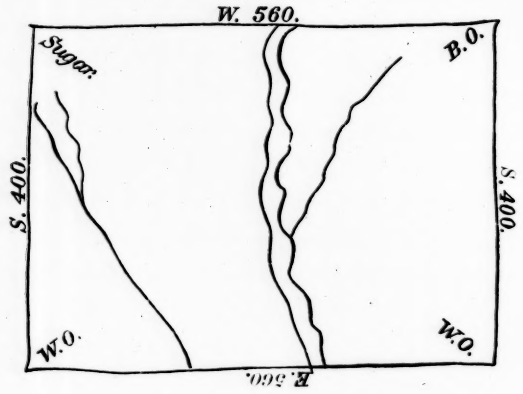
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

643 Endorsed as follows: (649.) Survey No. 44, made for Dr. Thomas Bond. 600 acres. Copy. Clerk's fee, 50c. ch'd.

644 No. 45.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of David Anderson, 1,400 acres of land, in Harrison county, in part of a land office treasury warrent of 2,000 acres, No. 21097, dated 1st December, 1783, on a right-hand branch of Buckhannon river, adjoining above his survey No. 43, bounded as followeth, viz: Beginning at a white oak, corner to said survey, thence by a line of the same east 560 poles to a white oak, south 400 poles, by a line of his survey No. 44, to a sugar tree, west 560 poles to a black oak, north 400 poles to the beginning.

No variation.

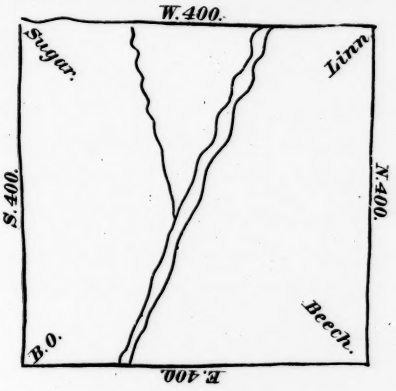
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

645 Endorsed as follows: (650.) Survey No. 45, made for Dr. Thomas Bond. 1,400 acres. Copy. Clerk's fee, 50c., ch'd.

646 No. 46.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of Col. William McWilliams, 1,000 acres of land, in Harrison county, by virtue of a land office treasury warrant, No. 15706, dated 8th May, 1783, on watters of a right-hand branch of Buckhannon river, adjoining on the west of his survey No. 4, bounded as followeth, viz: Beginning at a black oak, corner to said survey, thence by a line of the same south 400 poles to a sugar tree, west 400 poles to a linn, north 400 poles to a beech, east 400 poles to the beginning.

No variation.

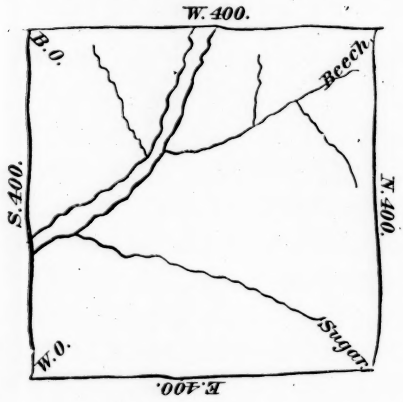
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

647 Endorsed as follows: (651.) Survey No. 46, made for Doct. Thomas Bond. 1,000 acres. Copy. Clerk's fee, 50c., ch'd.

648 No. 47.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of Col. William McWilliams, 1,000 acres of land, in Harrison county, by virture of a land office treasury warrent, No. 15710, dated 8th May, 1783, on watters of a right-hand branch of Buckhannon river, adjoining on the north of his survey No. 46, bounded as followeth, viz: Beginning at a black oak, corner to said survey, thence by a line of the same west 400 poles to a beech, north 400 poles to a sugar tree, east 400 poles to a white oak, south 400 poles, by a line of his survey No. 39, to the beginning.

No variation.

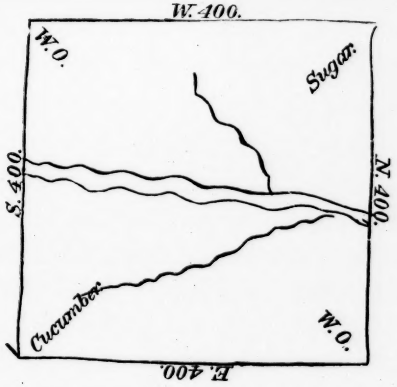
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

649 Endorsed as follows: (652.) Survey No. 47, made for Dr. Thomas Bond. 1,000 acres. Copy. Clerk's fee, 50c., ch'd.

650 No. 48.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of Col. William McWilliams, 1,000 acres of land, in Harrison county, by virtue of a land office treasury warrant, No. 15712, dated 8th May, 1783, on watters of Elk river, adjoining on the north of his survey No. 7, which is on watters of Buckhannon river, bounded as followeth, viz: Beginning at a white oak, corner to said survey, thence by a line of the same west 400 poles to a sugar tree, north 400 poles to a white oak, east 400 poles to a cucumber tree, south 400 poles, by a line of his survey No. 37, to the beginning.

No variation.

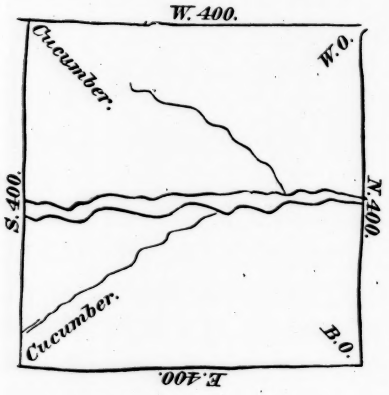
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

651 Endorsed as follows: (653). Survey No. 48, made for Dr. Thomas Bond. 1,000 acres. Copy. Clerk's fee, 50c., ch'd.

652 No. 49.



Surveyed for Doct. Thomas Bond, ass'ee of Col. William McWilliams, 1,000 acres of land, in Harrison county, by virture of a land office treasury warrant, No. 15703, dated 3d May, 1783, on watters of Elk river, adjoining on the north of his survey No. 48, bounded as followeth, viz: Beginning at a cucumber tree, corner to said survey, thence by a line of the same west 400 poles to a white oak, north 400 poles to a black oak, east 400 poles to a cucumber tree, south 400 poles, by a line of his survey No. 7, to the beginning.

No variation.

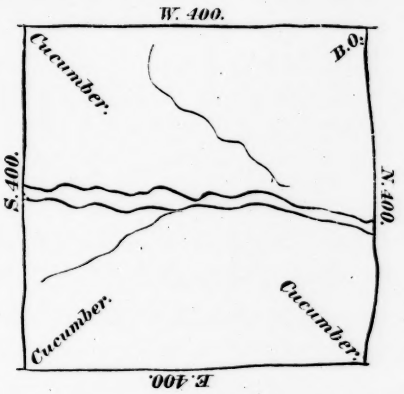
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

653 Endorsed as follows: Survey No. 49, made for Dr. Thomas Bond. 1,000 acres. Copy. Clerk's fee, 50c., ch'd.

654 No. 50.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of Col. William McWilliams, 1,000 acres of land, in Harrison county, by virture of a land office treasury warrant, No. 15702, dated 8th May, 1783, on watters of Elk river, adjoining on the north his survey No. 49, bounded as followeth, viz: Beginning at a cucumber tree, corner to said survey, then by a line of the same west 400 poles to a black oak, north 400 poles to a cucumber tree, east 400 poles to a cucumber tree, south, by a line of his survey No. 6, to the beginning.

No variation.

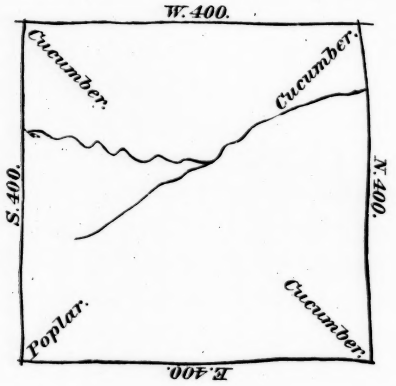
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste: JAMES MONROE, *Clerk.*

655 Endorsed as follows: (655.) Survey No. 50, made for Dr. Thomas Bond. 1,000 acres. Copy. Clerk's fee, 50c., ch'd.

656 No. 51.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of Col. William McWilliams, 1,000 acres of land, in Harrison county, by virture of a land office treasury warrant, No. 15711, dated 8th May, 1783, on watters of Elk river, adjoining on the north of his survey No. 50, bounded as followeth, viz: Beginning at a cucumber tree, corner to said survey, thence by a line of the same west 400 poles to a cucumber tree, north 400 poles to a cucumber tree, east 400 poles to a poplar, south 400 poles, by a line of his survey No. 5, to the beginning.

No variation.

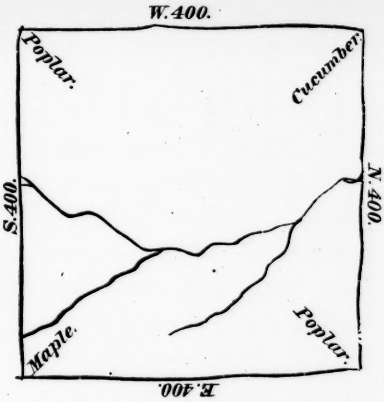
HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.

Teste : JAMES MONROE, *Clerk.*

657 Endorsed as follows: Survey No. 51, made for Dr. Thomas Bond. 1,000 acres. Copy. Clerk's fee, 50c., ch'd.

658 No. 52.



24TH JUNE, 1785.

Surveyed for Doct. Thomas Bond, ass'ee of Col. William McWilliams, 1,000 acres of land, in Harrison county, by virture of a land office treasury warrant, No. 15708, dated 8th May, 1783, on watters of Elk river, adjoining on the north of his survey No. 51, bounded as followeth, viz: Beginning at a poplar, corner to said survey, thence by a line of the same west 400 poles to a cucumber tree, north 400 poles to a poplar, east 400 poles to a maple, south 400 poles, by a line of his survey No. 4, to the beginning.

No variation.

HENRY FINK, *Ass't to*
WM. HAYMOND, *S. H. C.*

A copy.
Teste: JAMES MONROE, *Clerk.*

659 Endorsed as follows: (39.) Survey No. 52, made for Dr. Thomas Bond. 1,000 acres. Copy. Clerk's fee, 50c., ch'd.

660 *Henning & Co. Record, Ex. "A A."*

To the hon. county court now setting.

GENTLEMEN: We, your humble servants, desire & request that you will take into consideration and grant us relief from an overcharge of *quality* on a tract of land represented to contain in the aggregate the quantity of 40,000 acres, and is so charged upon the commissioner's books of Upshur county, West Virginia, in the name of William H. Morton. The said tract was sold on the 12 day of December, 1877, for the taxes due thereon for the year 1876, and purchased by George Henning & Co. — amount of taxes charged thereon for said year & paid by said Henning & Co. We, the company, believe the quantity of land embraced within the boundaries laid down in

said tract of land of 40,000 acres not to contain over 20,000 acres, after deducting therefrom the amount of older & better claims;
661 therefore, in consideration of the foregoing premises, we in confidence ask at your hands a reduction of the original quantity of 40,000 acres to 20,000 acres, or we properly desire that our application for such reduction be docketed & so remain for further proceidure hereafter. The object of this application is that if in case we shall be able to secure a deed for said land after the expiration of one year from the said 12 day of December, 1877, that we may be relieved from paying $600.00 tax for the year 1877, when we should be entitled only to pay ½ of that amount, and if in case the former owners thereof shall redeem the said land, then they would get the benefit of said reduction, & would not or could not complain.

GEORGE HENNING & CO.,
By H. F. & WATSON WESTFALL.

February 13th, 1878.

STATE OF WEST VIRGINIA:

IN THE COUNTY COURT OF
UPSHUR COUNTY, *February 13th*, 1878.

The court sat, agreeably to its adjournment on yester-.
Present: The same court.

The proceeding- had in this court on yesterday, on the law
662 side thereof, were this day read in open court, corrected, and signed by the court.

George Hennings & Co. this day petitioned the court for the relief of the payment of an excess of taxes asses-ed for the year of 1877 on a tract of 40,000 acres of land charged on the commissioner's land book in Washington district in the name of Wm. H. Morton. Upon consideration whereof it is ordered that said petition be here now docketed.

Ordered that this court do now adjourn till to-morrow morning, 9 o'clock.

D. D. T. FARNSWORTH.

At another day, to wit, the 24th day of April, 1879.
The court sat, agree-bly to its ad-ournment on yesterday.
Present: The same court.

The proceeding- had in this court on yesterday, on the — side thereof, were this day read in open court, corrected, and signed by the court.

George Henning & Co. having made application at the February term, 1878, for the releas-ment of the taxes for the year 1877–1878 on a certain tract of 40,000 acres of land assessed with taxes in Washington district in the name of Wm. H. Morton & for the cor-
663 rection of the number of acres charged and assessed with taxes on the commissioner's land books as aforesaid, whereupon this day came said company, by Jackman Cooper, the agent, as well as the prosecuting attorney on behalf of the State & county, and it

appearing to the court that said company have abandoned all lands claimed & held by actual settlers by the right of possession, and that the actual amount of acres which can be held by said company will exceed 20,000 acres, & said company are now the owners of said tract of land, it is therefor- ordered that the said district — do reduce the said tract of land from 40,000 acres to 20,000 acres on his books aforesaid, and that the taxes assessed on said excess of 20,000 acres for the year 1877–1878 be refunded to said George Henning & Co. as follows: For 1877, State tax, including school tax, $60; county tax, $80.00; district school tax, $120; building tax, $40.00, and for the year 1878, for State purposes, $60; for county purposes, $66.66⅔; for school purposes, $40.00; for building purposes, $60; for *for* road purposes, $20.00.

664 Ordered that this court do now adjourn until the first day of the next term.

D. D. T. FARNSWORTH.

I, John A. Hess, clerk of the circuit court of Upshur county, West Virginia, do hereby certify that the foregoing is a true copy from the late county court record of Upshur county, which has been by law made and is now a part of the record in my said office.

Given under my hand this the 12th day of December, 1884.

JOHN A. HESS, *Clerk.*

Endorsed as follows: Henning & Co. Copy of record. Exhibit A A. Fee for copy, 84 cts. Fee paid by M. T. Frame. John A. Hess, clerk.

665 *Decree. Entered September 26th*, 1887.

JOSEPH DUFFNER
vs.
DANIEL D. T. FARNSWORTH and Others. } In Equity.

This cause came on to be further heard, and was argued by counsel. Upon consideration whereof it is adjudged, ordered, and decreed as follows: That the contract made on the 24th day of April, 1883, a copy of which is filed as Exhibit C of the bill, be, and the same is hereby, set aside on the ground of failure of consideration therefor; and, it appearing that the plaintiff is under the evidence alone entitled to the restitution of the money paid under the said contract, as well as the amounts of money paid by him to Daniel D. T. Farnsworth and Philip Thomas in addition to and outside of the sum mentioned in the contract aforesaid, as well as interest on the said amounts; and it further appearing that the defendants now before the court are liable for the amounts of money paid by the plaintiff under the said contract in proportion to the respective interests claimed by them in the real property mentioned

666 in the said contract; and it further appearing that the plaintiff paid under the said contract the sum of one hundred dollars ($100) on the 24th day of April, 1883, the sum of two thousand

dollars ($2,000) on the 4th day of May, 1883, and the sum of twelve thousand and nine hundred dollars ($12,900) on the 14th day of July, 1883, and that the total amount paid by him under the said contract, with interest to this date, is eighteen thousand seven hundred and ninety-four dollars and fifty-three cents ($18,794.53); and it further appearing that Daniel D. T. Farnsworth is liable for one-fortieth thereof, A. B. Clark for one-fortieth thereof, Henry C. Koon for one-fortieth thereof, L. S. S. Farnsworth for four and one-half fortieths thereof, Cyrus Hinkle for one-fortieth thereof, John A. Crislip for one and one-half fortieths thereof, W. D. Farnsworth for one-fortieth thereof, William H. Westfall, as executor of the will of Henry F. Westfall, deceased, for one-fortieth thereof, W. C. McCormick for one-fortieth thereof, William H. Helphenstine for one-fortieth thereof, M. S. Thomas for one-fortieth thereof, Alfred M. Smith for three-fortieths thereof, J. J. Morgan, administrator of the estate of Jackman Cooper, deceased, for one-fortieth thereof,
667 and Valentine Strader and Philip Reger, jointly, for one-fortieth thereof, and that the said Daniel D. T. Farnsworth, A. B. Clark, Henry C. Koon, L. S. S. Farnsworth, Cyrus Hinkle, John A. Cristlip, W. D. Farnsworth, Wm. C. McCormick, William H. Helphenstine, M. S. Thomas, Alfred M. Smith, Valentine Strader, and Philip Reger are jointly liable for one-fortieth thereof, it is by the court adjudged, ordered, and decreed that the plaintiff recover against the said Daniel D. T. Farnsworth the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid, and against A. B. Clark the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid, and from Henry C. Koon the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid, and from L. S. S. Farnsworth the sum of two thousand one hundred and fourteen dollars and thirty-seven cents ($2,114.37), with interest from this date until paid; from the said Cyrus Hinkle the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid; from the said John A. Crislip the
668 sum of seven hundred and four dollars and seventy-nine cents ($704.79), with interest from this date until paid; from the said W. D. Farnsworth the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid; from the said William H. Westfall, executor as aforesaid, the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid, to be paid out of the assets belonging to the estate of the said Henry F. Westfall, deceased, in the hands of the said William H. Westfall, as executor as aforesaid, to be administered; from the said W. C. McCormick the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid; from William H. Helphenstine the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid; from the said M. S. Thomas the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date

until paid; from the said Alfred M. Smith the sum of one thousand four hundred and nine dollars and fifty-eight cents ($1,409.58),
669 with interest from this date until paid; from the said J. J. Morgan, administrator of the estate of Jackman Cooper, deceased, the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid, to be paid out of the assets belonging to the estate of Jackman Cooper, deceased, in the hands of the said J. J. Morgan, administrator as aforesaid, to be administered, and from the said Valentine Strader and Phillip Reger, jointly, the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid, and from the said Daniel D. T. Farnsworth, A. B. Clark, Henry C. Koon, L. S. S. Farnsworth, Cyrus Hinkle, John A. Cristlip, W. D. Farnsworth, W. C. McCormick, William H. Helphenstine, M. S. Thomas, Alfred M. Smith, Valentine Strader, and Phillip Reger, J. J. Morgan, administrator as aforesaid, and the said William H. Westfall, executor as aforesaid, jointly, the sum of four hundred and sixty-nine dollars and eighty-six cents ($469.86), with interest from this date until paid; but execution, so far as it shall be against the said Morgan and William H. Westfall, as to the last-mentioned sum of four
670 hundred and sixty-nine dollars and eighty-six cents, shall be levied of assets in their hands in their characters aforesaid, and there shall be but one satisfaction of same; and it further appearing that the amount of money paid by the plaintiff to Daniel D. T. Farnsworth and Philip Thomas in addition to and outside of the sum mentioned in the contract aforesaid was five thousand eight hundred dollars ($5,800), which was paid on the first day of November, 1883, it is by the court further adjudged, ordered, and decreed that the said plaintiff recover of the said Daniel D. T. Farnsworth and Phillip Thomas the sum of seven thousand and one hundred and fifty-seven dollars and twenty cents ($7,157.20), the aggre-ate of the said five thousand eight hundred dollars ($5,800) and interest thereon from the first day of November, 1883, until this date, and interest on the said sum of seven thousand one hundred and fifty-seven dollars and twenty cents ($7,157.20) from this date until paid; and it further appearing to the court that between the making of the contract in April, 1883, and the first day of November, 1883, the said plaintiff expended the sum of nine hun-
671 dred and forty dollars in the aggre-ate in expenses connected with the effort to take possession of the lands sold to him and the sum of 463 dollars taxes paid by him, amounting in the aggre-ate to the sum of fifteen hundred and three dollars ($1,503), it is by the court adjudged, ordered, and decreed that the said plaintiff recover the said sum of fifteen hundred and three dollars ($1,503), with interest from this date until paid, from the said Daniel D. T. Farnsworth, A. B. Clark, Henry C. Koon, M. S. Thomas, L. S. S. Farnsworth, Cyrus Hinkle, John A. Crislip, W. D. Farnsworth, W. C. McCormick, William H. Helphenstine, Alfred M. Smith, Valentine Strader, and Phillip Reger, J. J. Morgan, administrator, and William H. Westfall, executor, but execution against said Morgan and William H. Westfall as to the above-mentioned sum of $1,503

shall be levied of assets in their hands in their characters aforesaid, but there shall be but one satisfaction as to that amount. It is by the court further adjudged, ordered, and decreed that the said plaintiff recover his costs expended about the prosecution of this suit from the said Daniel D. T. Farnsworth, A. B. Clark, Henry C. Koon, L. S. S. Farnsworth, M. S. Thomas, Cyrus Hinkle,
672 John A. Cristlip, W. D. Farnsworth, W. C. McCormick, William H. Helphenstine, Alfred M. Smith, Valentine Strader, Philip Reger, and Philip Thomas, J. J. Morgan, administrator, and William H. Westfall, executor, but execution for said costs, so far as said Morgan and William H. Westfall are concerned, shall be levied of assets in their hands in their characters aforesaid. Nothing in this decree is intended to affect in anywise the rights of the plaintiff as against any of the parties to the tran-action involved in this suit whose name- are not specifically mentioned in this decree. Execution may issue severally or jointly as indicated by decree. It is further adjudged, ordered, and decreed that the plaintiff do recover *to* parties against whom this decree is rendered their respective interest conveyed to him by the deed of the 12th of May, 1883, mentioned in the bill, such conveyance to be by quitclaim deed, with special war-nty, and in the event of the failure of the said plaintiff to do so it shall be the duty of J. Y. Moore, who is hereby appointed special commissioner for the purpose, to execute such deed to them for and on behalf of the said plaintiff, for which he shall be al-
673 & 674 lowed a fee of ten dollars; and the defendants Daniel D. T. Farnsworth and Philip Thomas desiring an appeal from this decree, said appeal is allowed the said defendants upon their entering into bond before the judge of this court in the sum of two thousand dollars, conditioned that the said defendants shall duly prosecute their said appeal with effect and, moreover, pay the amount of cost and damages rendered and to be rendered in case the said decree shall be affirmed.

675 *Decree. Entered September 27th*, 1887.

JOSEPH DUFFNER
vs.
DANIEL D. T. FARNSWORTH & Others. } In Equity.

On motion of complainant, by his counsel, leave is granted him to sue out executions in this cause if the defendants fail to pay any amount as-ertained by this decree to be due from them to the said complainant within ten days from the entry of this order.

676 *Decree. Entered Oct.* —, 1887.

DUFFNER
vs.
FARNSWORTH *et al.*

The court having heretofore appointed Myer Newberger stenographer to take down the evidence in this cause, and he having done

so to the entire satisfaction of the court, it is ordered that he be allowed the sum of twenty dollars ($20) for his services in this respect, and the clerk of the court is directed to tax that amount in the cost of this suit.

(Signed) J. J. JACKSON, *Judge.*
October —, 1887.

677 *Decree. Entered February 28th,* 1888.

JOSEPH DUFFNER
vs.
D. D. T. FARNSWORTH and Others. } In Chancery.

The plaintiff, Joseph Duffner, desiring an appeal to the Supreme Court of the United States from the decree entered in this cause at this term, the said appeal is allowed him upon his entering into bond before the judge of this court in the sum of $500, to be approved by said judge.

And the court doth certify that the amount in controversy in this cause, exclusive of interest and costs, exceeds the sum of five thousand dollars.

678 *Defendants' Appeal Bond.*

Know all men by these presents that Daniel D. T. Farnsworth, C. J. Farnsworth, and C. E. Mylins are held and firmly bound unto Joseph Duffner in the just and full sum of ten thousand dollars; for the true payment whereof, well and truly to be made, we bind ourselves, *one* and each of our heirs, executors, administrators, &c.

Sealed with our seals and dated this 8th day of October, A. D. 1887.

The conditions of the above obligations *is* such that whereas, in a certain chancery cause lately depending in the district court of the United States for the district of West Virginia, at Wheeling, wherein Joseph Duffner was complainant and the said Daniel D. T. Farnsworth & others were defendants, the defendants D. D. T. Farnsworth and Phillip Thomas were granted by said district court an appeal from a decree entered in said cause:

679 Now, if the above *bond* Daniel D. T. Farnsworth and Phillip Thomas shall duly prosecute their said appeal with effect and, moreover, pay the amount of costs and damages rendered and to be rendered in case the decree shall be affirmed, then this obligation to be void; otherwise remain in full force and effect.

D. D. T. FARNSWORTH. [SEAL.]
C. J. FARNSWORTH. [SEAL.]
CHAS. E. MYLINS. [SEAL.]

Witness:
C. C. F. McWHORTER.

Bond approved.
J. J. JACKSON, *Judge.*

I, C. F. McWhorter, clerk of the county court of Upshur, West Virginia, do certify that the above-named D. D. T. Farnsworth, C. J. Farnsworth, and Charles E. Mylins, obligators to the foregoing bond, are personally well known to me, and I certify that they have each acknowledged the same to me as their act and have subscribed my name as a witness to their signature-; and I do further certify that said obligators have estates, real and personal property, which I beli-ve to be largely in excess of the penalty of said bond and
680 can be safely taken and deemed to be good and ample security for the penalty of said bond. I regard them to be worth not less then from eighteen to twenty thousand dollars.

Given under my hand & official seal this 8th day of October, 1887.

[Seal County Court, West Virginia, Upshur County.]

C. C. F. McWHORTER,
Clerk Upshur County Court.

681 *Duffner's Bond for an Appeal.*

Know all men by these presents that we, Joseph Duffner, principal, and N. B. Scott, security, are held and firmly bound unto Daniel D. T. Farnsworth and Phillip Thomas in the just and full sum of five hundred dollars; the payment whereof, well and truly to be made, we bind ourselves, jointly and severally, and our and each of our heirs and personal representatives.

Seal-d with our seals and dated this 24the day of December, in the year 1887.

The condition of the above obligation is such that whereas, in a suit in equity lately depending in the district court of the United States for the district of West Virginia, at Wheeling, wherein the said Joseph Duffner was complainant and the said Daniel D. T. Farnsworth and Phillip Thomas and others were defendants, the said defendants, Daniel D. T. Farnsworth and Phillip Thomas, were granted by the said district court an appeal from the final de-
682 cree entered in the said cause; and whereas the said Joseph Duffner has been granted by the said district court a cross-appeal from the said decree: Now, if the above Jos. Duffner shall duly prosecute his said appeal with effect and, moreover, pay the amount of the costs and damages rendered and to be rendered in case the said decree shall be affirmed, then this obligation to be void; otherwise to remain in full force and virtue.

JOS. DUFFNER. [SEAL.]
N. B. SCOTT. [SEAL.]

Bond approved.
J. J. JACKSON,
U. S. Dist. Dist. *Judge, D. W. Va.*

STATE OF OHIO, *County of Cuyahoga,* } *To wit:*

Chas. L. Fish, a notary, of said county, do certify that Joseph Duffner, whose name is signed to the annexed writing, bearing date

on the 24th day of December, in the year 1887, has this day acknowledged the same before me in my said county.

Given under my official signature and seal of office 29th day of December, 1887.

[Officia- Seal Cuyahoga County.]

CHAS. L. FISH,
Notary Public.

STATE OF WEST VIRGINIA, } *To wit:*
Ohio County, }

I, Louis F. Stifel, a notary public in and for said county, do certify that N. B. Scott, whose name is signed to the annexed writing, bearing date the 24th day of December, 1887, has this day acknowledged the same before me in my said county.

683 & 684 Given under my hand and official seal this 10th day of January, 1888.

[Seal Louis F. Stefel, Notary Public, Ohio County.]

LOUIS F. STEFEL,
Notary Public in and for Ohio County, West Virginia.

Endorsed as follows: U. S. court. Joseph Duffner *vs.* D. D. T. Farnsworth. Bond of Duffner & N. B. Scott. Filed Feb. 2nd, 1888. Test: Jasper Y. Moore, cl'k D. C. U. S., D. W. Va.

685 UNITED STATES OF AMERICA, } *ss:*
District of West Virginia, }

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West —, do hereby certify that the foregoing is a true transcript of the record and proceedings in a certain suit in chancery lately pending in said district court between Joseph Duffner, *was* complainant, and Daniel D. T. Farnsworth and others, *were* defendants, with all things touching the same, as fully and wholly as they now exist among the records of my office.

Seal District Court United States, District West Virginia, Wheeling, W. Va.

In testimony whereof I hereto set my hand this 11th day of June, A. D. 1888, and the seal of our said court.

JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

Endorsed on cover: West Virginia D. C. U. S. No. 392. Daniel D. T. Farnsworth and Philip Thomas, appellants, *vs.* Joseph Duffner. Filed August 4, 1888.

Office Supreme Court U. S.
FILED.
AUG 5 1891
JAMES. H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

DANIEL D. T. FARNSWORTH and PHILIP THOMAS, Appellants,

vs.

JOSEPH DUFFNER.

No. 69.

Appeal from the District Court of the United States for the District of West Virginia.

BRIEF FOR APPELLANTS.

A. H. GARLAND,
H. J. MAY,
For Appellants.

Press of McGill & Wallace, Washington, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

DANIEL D. T. FARNSWORTH AND PHILIP THOMAS, APPELLANTS,
vs.
JOSEPH DUFFNER.
No. 69.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

BRIEF FOR APPELLANTS.

The litigation in this cause grows out of the sale by appellants and others to the appellee of a tract of land now situated in Upshur, Webster, and Randolph Counties, in West Virginia, which has been known since its survey in 1795 as the "Thomas Wilson survey" of forty thousand acres. At the time the sales referred to in this suit were made, and the deeds recorded, the larger portion of the land was located in Upshur County, so that placing the deeds on record in that county was a compliance with the statutes of West Virginia as to the whole tract (Acts W. Va., 1872–73, Ch. 117, § 25).

The grant was made to Thomas Wilson by a patent from Governor Brooke, on 30th December, 1795, for forty thousand acres of land; but there are 4,588 acres included in this survey that are excepted in this conveyance (Rec., 43–44).

The whole tract was sold for the taxes of 1873 and 1874, on the 11th October, 1875, in the name of Thomas Wilson, to whom the taxes were alone charged, and purchased by the State of West Virginia (Rec., 234.) The State also purchased the land for the delinquent taxes of 1875. The title became irredeemably vested in the State by reason of such sale, purchase, and forfeiture (Acts W. Va., 1871, Ch. 194, p. 247).

On 1st January, 1796, Thomas Wilson conveyed his title to James Swann, by a deed acknowledged before the mayor of Philadelphia (Rec., 24–26).

On 4th March, 1839, John Peter Dumas, trustee for the creditors of James Swann, authorized August F. Requet, by power of attorney, to sell and convey the land (Rec., 26–27).

On 6th October, 1840, Dumas, by Requet, his attorney-in-fact, conveyed the land to George W. Howard (Rec., 27–29).

The above-named deeds and power of attorney are certified to be true copies of the originals by Frederick Bull, Notary Public (Rec., 25–26; 27–29). They were, with the certificates thereto, duly admitted to record in Upshur County, West Virginia, on 16th February, 1876 (Rec., 26, 27, 29).

On 1st July, 1873, George W. Howard conveyed the same land to William H. Morton, and the deed was admitted to record in Upshur County, West Virginia, on 16th February, 1876 (Rec., 29–31).

The certificates of the clerk of Upshur County, and of the auditor of the State, show the land to have been assessed for the years 1874 and 1875 in the name of

Thomas Wilson, and not in the name of any other person; that it was purchased for the taxes of the year 1874, by the State of West Virginia, at the delinquent tax-sale in the year 1875, and the name of Thomas Wilson was dropped from the assessor's land-books in 1876; that the State also purchased the land for the delinquent taxes of the year 1875; that the taxes on the land were charged to William H. Morton, and to no other person, for the year 1876, and returned delinquent in his name (Rec., 81–83).

In pursuance of the conveyances referred to above, the land was, in 1876, transferred to, and stood in the name of, William H. Morton for taxation on the assessor's land-books. The taxes of 1876, charged to William H. Morton, were not paid by him, and, on 12th December, 1877, the appellant, Farnsworth, and his associates, designated as a company, purchased the tract of land at the delinquent tax-sale, for the year 1876, and entered into an agreement in relation to their respective interests under such purchase (Rec., 13–16; 44–47). Although this agreement is dated 11th December, 1877, it was signed by many of the parties subsequently to that time. It was recorded in Upshur County, 24th February, 1879 (Rec., 16).

A tax-title deed reciting all the facts as to the purchase by Farnsworth and others, was made according to law, on 26th February, 1879, and duly recorded in Upshur County on the following day (Rec., 16–18).

The consideration named in the deed is $642.20, but in reality the purchase-money amounted, as stated by Farnsworth, to $3,150.67 (Rec., 217); and, as stated by the clerk, to $2,983.82 (Rec., 88). The land was held by these purchasers under the tax-title deed until the sale and conveyance was made to the Duffners (or to the appellee who had acquired the rights of the other Duff-

ners) according to the offer or agreement of 24th April, 1883, by a deed bearing date 12th May, 1883, but delivered on the 14th day of July, 1883 (Rec., 19–24).

It was the intention of these purchasers to sell their title to the land whenever an opportunity offered. For the purpose of effecting any such sale, the purchasers who, as before remarked, for convenience designated themselves a company, at their meetings authorized D. D. T. Farnsworth, Jackman Cooper, Watson Westfall, and Mr. Henning to look out for land-purchasers, receive offers for the land, and report any offers received by them to the rest of the company for their acceptance or rejection. This was the extent of their authority. Henning lived in Pennsylvania, and did not take any part personally in the transaction. Farnsworth, Westfall, and Cooper were chosen because they resided in Buckhannon, near the land, and had greater opportunities of seeing land-purchasers than the other interested parties, who resided in different parts of the country and distant from the land. Watson Westfall sold his interest in the land, and ceased to act with the so-called committee for that reason. Henning was not present personally at any of the negotiations, but was represented by Philip Thomas, one of the appellants (Rec., 150–1, 161, 167, 178–9, 199, 204–5).

The members of the committee did not sign any agreement with the Duffners relating to the proposed sale, because, as fully explained by them at the incipiency of the negotiations, they had no power to make an instrument in writing that would bind the owners of the land (Rec., 19 Ex. C., 224).

The agreement or offer to purchase was signed by Charles, Matthew, and Joseph Duffner, and the deed was made to these parties, but, for reasons shown in the bill and by the evidence, Joseph Duffner, the appellee, acquired the interests of Charles and Matthew, and hence is the sole complainant (Rec., 19, 124.)

The Duffners did not learn of the land, or that it was for sale, from any of the owners or from any of the persons above named who were authorized to receive offers for it (Rec., 134). The appellant, Thomas, who was permitted at the commencement of the transaction with the Duffners to act with Farnsworth and Cooper as the representative or agent of the Hennings, explains how Col. Wood obtained information concerning the land (Rec., 183–4). The knowledge of the Duffners about the land arose from the fact that Matthew Duffner had a partner in business in Virginia by the name of Wood. Duffner mentioned to his partner that he was looking for timber. Wood suggested that his cousin—Col. Wood—who lived near Oakland, Md., had tracts of land for sale, and if Duffner wished him to do so, he would write to his cousin for particulars. This was done, and an answer received from Col. Wood in which he stated he had lands for sale in Virginia and West Virginia. Some weeks afterward Matthew Duffner called to see Col. Wood, at his home near Oakland, and examined a map of the West Virginia land, and then returned to Cleveland, Ohio, to confer with other parties in regard to its purchase. Pursuant to an arrangement among themselves, Charles, Matthew, and Joseph Duffner (appellee) met Col. Wood at Clarksburg, West Virginia. They proceeded together from there to Buckhannon with the intention of examining the land (Rec., 111, 122, 129).

When the party reached the hotel at Buckhannon there was some discussion as to a proper person to guide them over the land, and point it out to them. The name of Watson Westfall, the county surveyor, was suggested. About dark Westfall happened to come along, and Mr. Ferrell, the proprietor of the hotel, took him into the Duffners' room and introduced him to the members of the party (Rec., 95). Westfall expressed a willingness to perform the service if the Duffners would pay him for it.

An arrangement was agreed upon by which Westfall accompanied the party over the land, pointed it out to them, and was paid by the Duffners for such service accordingly (Rec., 134, 188–9).

It may be proper to remark here that Westfall at one time owned one share in the land under the agreement, but he had sold it long before he was employed by the Duffners to perform any service for them (Rec., 4, 14).

The Duffners were occupied Saturday, Sunday, and Monday on the land. Westfall was with them Saturday and Monday and pointed it out to them (Rec., 188–197).

They returned to Buckhannon with their minds made up to purchase it (Rec., 111–112, 122–3, 129–131, 175–6, 189–191). When they got to the hotel they found Col. Wood in such a state of intoxication that they abandoned further negotiations with him as to the purchase of the land, for that reason (Rec., 123, 130, 175–6, 204). On their return from viewing the land they met the appellants for the first time and were introduced to them (Rec., 175, 204). The son of the hotel proprietor was sent for Farnsworth (Rec., 97, 204). He, Farnsworth, went to the hotel and there met Thomas, Cooper, and the Duffners (Rec., 204). The Duffners having declined to transact the business further with Col. Wood, were informed they could negotiate with D. D. T. Farnsworth and Jackman Cooper, who comprised what is called the committee of the owners. Philip Thomas, appellant, claimed the Hennings, who owned nineteen-fortieths of the land, had requested him to act with such committee in looking after a purchaser. Upon this representation he was admitted to act with Farnsworth and Cooper (Rec., 204–5). It was arranged by the parties to meet the next morning at Farnsworth's store for further proceedings. The meeting took place (Rec., 112, 123, 130, 176, 204).

At this meeting all the details were discussed, and the price of the land and terms of the sale finally agreed

upon. The owners of the land were scattered over the country and resided in different States. Thomas had already spent time and money as the representative of the Hennings in his efforts to make a sale. The members of the committee, as constituted at the meeting, anticipated trouble and expense in obtaining the consent of these owners to the sale and their signatures to the deed, chiefly because a larger price had previously been asked for the land. The appellee made the proposition to give each of the members of the committee $500 to cover services and expenses in this respect. Cooper was too old and feeble to aid in this work, and took no part in it. Thomas objected to the compensation offered as inadequate. Conversations were then held between the Duffners and Thomas in the German language. Thomas reported to Farnsworth, after such conversations, that the Duffners were willing and proposed to give him $6,500 for procuring the deed, upon condition that if he failed he was to have nothing. The Duffners admitted they had made the proposition, and when questioned by Farnsworth, who did not understand the German language, they assented to it. Thomas then stated that he would need the assistance of Farnsworth to accomplish the work, and offered him one-half of the amount if he would join him. Farnsworth accepted the proposition. Duffners had already suggested that it was immaterial to them to whom they paid the $20,000. They were willing to give $21,500, which was to embrace the consideration money and expenses in procuring the deed for the land. With the full knowledge and consent of the appellee the consideration for the title to the land was placed in the offer or agreement at $15,000, and it was understood by all present, and consented to by appellee and the other Duffners as a part of the transaction, that the sum of $6,500 was to be paid to, and equally divided between, Thomas and Farnsworth for services and ex-

penses in obtaining the deed from the owners, and that it in no way formed part of the purchase-money or of the price given for the title to the land. A separate agreement was signed and delivered by the Duffners to the appellants for the $6,500, which, at a subsequent time, was taken up by the appellee and new obligations in writing given to each of the appellants in the place thereof for one-half of the amount. These obligations were paid by the appellee after the delivery and acceptance of the deed by discounting them before maturity. It was understood at the meeting that 20,000 acres of the survey would be guaranteed to the purchasers against the claims of certain actual settlers, and that such settlers should not be disturbed. These provisions are embraced in the agreement or offer of the Duffners (Rec., 19, Ex. C., 112, 124, 131, 133, 136, 176–8, 204–7, 213).

As shown above, the terms of sale were settled and reduced to a written offer or agreement which the Duffners signed, and at the same time the appellee paid $100. Subsequently he remitted $2,000 to Farnsworth, and when the title had been examined by appellee and his counsel, and found satisfactory, and as represented, and the deed delivered, the balance of the purchase-money, $12,900, was paid, and the sale finally closed (Rec., 19, 131, 178–9, 214).

The Duffners were to get from the vendors such title as they had obtained from the State at the delinquent tax sale. This fact is established by the recitals in the offer or agreement and in the deed; and by the evidence relating to the terms of the sale (Rec., 19, Ex. C., 20, 204).

The appellants and their associates did not undertake to put the purchasers in actual possession of the land. On the contrary, it is shown by the only evidence on this point that, if the sale should be consummated, the Duffners agreed to have a survey of the land made as soon as practicable after the delivery of the deed (Rec.,

231). This was never done. In September, 1883, the appellee sent his son-in-law, Schmeider, to take possession of the land, and the county surveyor, at his request, went on the land and pointed it out. But Schmeider obstinately desired to commence work on a piece of land that would raise a controversy, but did not do so, and apparently abandoned everything for this reason (Rec., 115–117).

Appellee bought the land for speculation. He took one Baldwin with him in August, 1883, and, with the county surveyor, pointed out the land to him for the purpose of inducing him to buy an interest in it (Rec., 117–203).

The appellee was fully informed as to the character of the title before he paid the purchase-money and took the deed. In addition to the statements of appellants upon this subject he was advised by his German friends and acquaintances in West Virginia against the purchase of tax-titles in that State, who suggested to him the necessity of employing local counsel to investigate the title before paying out his money (Rec., 155–6, 169, 236–9).

He disregarded the advice of such friends and acquaintances, and declined to employ such counsel, but relied on his own judgment and on the opinion of Mr. Fish, his local counsel of Cleveland, Ohio, who had been employed by him for fifteen or twenty years (Rec., 131, 153, 169, 178).

The appellee and Mr. Fish arrived at Buckhannon Wednesday, 11th July, 1883, about 10 o'clock in the forenoon. Mr. Fish spent the remainder of that day, all of Thursday and Friday, and part of Saturday, at the clerk's office in examining the deed records and other books and papers relating to the tax-title. He also examined the statutes of West Virginia upon the subject, and remarked that they were similar to the statutes of Ohio. In the afternoon of Saturday, 14th July, Mr. Fish

announced publicly, and in the presence of D. D. T. Farnsworth, Jackman Cooper, Henry F. Westfall, and others, in the clerk's office, that in his examination of the tax-title he had found the representations of the appellants and vendors correct and reliable, and at the same time he told appellee he could safely pay the money and take the property (Rec., 131, 142, 160, 165, 179, 194, 213, 215). Thereupon the deed was examined by Mr. Fish and delivered to appellee, who handed over to Farnsworth his certified check for $12,900, the remainder of the purchase-money (Rec., 24, 214–15).

The contract of sale was fully executed on the 14th July, 1883, and the deed recorded on that day (Rec., 24). Appellee expressed himself satisfied with the result of the investigation of the title and returned to Cleveland, Ohio (Rec., 160).

The land was visited again by the appellee in August, 1883, when he brought with him his son-in-law, Schmeider, and Augustin Baldwin. The county surveyor went over the land with appellee, Schmeider, and Baldwin, and pointed it out to them. On this occasion appellee endeavored to sell the land, or an interest in it, to Baldwin. This was the object of the visit to the land (Rec., 115, 116, 117, 203).

In the following September appellee again sent Schmeider to the land. But Schmeider, as before stated, wanted to begin work on a piece of land that the county surveyor informed him was claimed by somebody else, and because he could not do so without an anticipated controversy, such work was abandoned, but Schmeider remained in the vicinity doing nothing until the next March (Rec., 116).

No further efforts were made by appellee to enforce his rights under his title to the real estate. He failed to make a survey after he received the deed. He asserted his possession of the land, however, in August, 1883, by

going upon it, pointing it out to one Baldwin, and offering to sell him an interest in it. And also by paying the taxes (Rec., 287). He failed to ascertain the number of acres in the tract, exclusive of the claims of settlers who had held possession and paid taxes for ten years, and has never therefore been in a position to sue the grantors on their express guaranty contained in the deed (Rec., 21). When appellee failed to make a speculative sale he never visited the land again, but simply abandoned all of his rights and began the cry of fraud.

He last visited the land in August, 1883, for the purpose, as he expressed himself, of selling an interest in it and making a big thing out of it. On the 12th of February, 1886, two years and a half afterwards, the bill in this cause was filed (Rec., 3).

The scheme of the bill is fraud, misrepresentation, and conspiracy; and all the conversations had with the appellants, whether in relation to the sale of the land or upon the subject of religion, public offices, private business, or anything else, are minutely detailed in the bill for the purpose of establishing the alleged fraud and conspiracy. Even the kind attention of the appellants and their associates to the Duffners and their counsel, Fish, are intentionally misconstrued by the allegations of the appellee into a species of criminal surveillance.

It is admitted that appellant, Thomas, never had or claimed title to the land. He simply acted as an agent for the Hennings in making the sale, and his acts were all subsequently ratified by his principals. It is claimed, however, that he joined with some of the persons who had purchased the land to defraud the appellee in making the sale to him (Rec., 5).

It is alleged that it was the intention of the persons who purchased the land at the tax-sale to sell their pretended title to whomsoever they could defraud and deceive into believing the title valid and into buying it, when

they knew their title was utterly worthless; that D. D. T. Farnsworth, Philip Thomas, appellants, and Jackman Cooper conspired and associated themselves together, and in order to induce the appellee to buy the land made numerous false and fraudulent representations with respect thereto, and among other things represented that the title was valid and perfect, and that the deed to be executed to him (and others) would convey a valid and perfect title, except to the portions of the land which had been in the possession of actual settlers for ten years under a claim of title; that there were more than 20,000 acres which were not so held by actual settlers; that they used many other fraudulent means to induce the appellee and Charles and Matthew Duffner to believe such representations, and used other fraudulent means to prevent the appellee and the other Duffners from obtaining from other sources information with reference to the validity of the title, and induced them to go through the farce of making a troublesome and expensive journey to inspect the land, when the said committee, and those for whom they were acting, well knew the possession of the land, nor any part thereof, could not be acquired under the title which they were fraudulently endeavoring to sell; and in order to prevent the appellee from making inquiries in other directions concerning the title, and to induce him to accept and confide in the representations as to the title, the appellant, Farnsworth, at the time, also represented that he had been Governor of West Virginia, a member of the State Senate, was president of a bank and of a railroad company, a member of the Baptist church, had built a church edifice, and that he was not such a man as would deceive or take advantage of the appellee; that, relying on such representations and being in ignorance of their falsity, the appellee and Charles and Matthew Duffner, on the 24th of April, 1883, entered into a contract with the committee to purchase the land for $20,000; that the

committee represented that Thomas and Farnsworth, appellants, were entitled to receive $5,000 of the $20,000 for their services as members of the committee; that the appellee, relying on the alleged fraudulent representations and still being ignorant of such fraud, paid $100 at the time the contract was entered into, and $2,000 on or about 4th May, 1883 (Rec., 5, 6).

It is also alleged that an abstract of title was demanded of Farnsworth, in writing, of which no notice was taken (Rec., 7); that said Farnsworth, as a part of the scheme to defraud appellee and prevent him from investigating the title, falsely and fraudulently represented that the attorneys at law practicing at the bar of Upshur County were wholly unreliable; that, believing this false representation and relying on the representations of the other members of the committee with reference to the title, he deemed it unnecessary to employ counsel from other parts of West Virginia, and took with him to Buckhannon from Cleveland an attorney at law who was not learned in the law of West Virginia, or a member of the bar of that State, but, who was an old friend of the appellee and a sensible and reliable man (Rec., 7).

It is alleged that similar representations to the above were made by appellants and others to Mr. Fish, the attorney, when in the town of Buckhannon, by which said attorney and appellee were induced to believe the title valid, and that means were used to prevent appellee and his attorney from examining into the title and ascertaining the vices therein; also, that appellee did not rely on said attorney to make an investigation of the title, nor upon the investigation actually made by him, but still relied on the alleged representations of appellants and others, and was deceived thereby (Rec., 7).

It is alleged that appellants falsely and fraudulently represented to the appellee that the other persons interested in the land were dissatisfied with the sale, and it

would require peculiar efforts to induce them to execute a deed, and appellee was required thereby to pay Farnsworth and Thomas $1,500 for services in this respect, and appellee was induced by such representations to give them this amount, and included $750 thereof in a note to each of them for $3,250, which he executed and paid (Rec., 8).

It is alleged that in 1883 appellee made arrangements to take possession of the land, and sent an agent to Upshur County for that purpose, who applied to D. D. T. Farnsworth and others to be placed in such possession, but those to whom he applied refused to show him the land or put him in possession. Alarmed at this, appellee alleges he pursued an investigation whereby for the first time he discovered the fraud of which he had been the victim, and that he has been unable to acquire possession of any part of the land; that the deed to him conveyed no title to him whatever, which was well known to the grantors; that the consideration for which appellee paid his money wholly failed; that there were not in April, 1883, nor at any subsequent time, so much as 20,000 acres of said tract which had not been held for ten years by actual settlers with claim of title (Rec., 9).

It is alleged that at no time after the making of the contract of April 24, 1883, were the pretended owners, or any of them, dissatisfied with the sale, nor did it require any peculiar efforts to induce them to execute the deed; and the appellee charges that all the representations with regard to the land and the deed by which he was induced to pay money to the appellants, or to said committee, were false and fraudulent, by reason of which appellee lost various sums of money (Rec., 9, 10).

The appellee then assigns three distinct and independent reasons why the title acquired by him was worthless, and prays for a decree in his favor against the grantors and Thomas for the consideration money,

and other money expended, with interest; also for expenses incurred by him in the transaction, and waives answers under oath (Rec., 11, 12).

The above are substantially the material allegations of the bill.

The appellant, Farnsworth, answered the bill under oath, saving all proper grounds of exception and objection as fully as if he had formally demurred thereto, and says that by the showing of the bill the relief sought is for alleged defect of title, etc., and that appellee's remedy is for action of covenant in another forum (Rec., 32).

He denies fully the allegations in the bill as to conspiracy, fraud, and misrepresentation. He denies that he was acquainted with the previous history of the title of William H. Morton to the tract of land, or knew that Morton had no title to such land; or that they were acquiring none by such purchase at the tax sale; or that he was acquainted with any particular or other alleged vices in the title. He was told and believed it was the Wilson survey that was sold for taxes, and that the taxes for 1876 were only charged to one person (Rec., 33).

He denies that Phillip Thomas was ever joined with him in any conspiracy to defraud appellee, and does not believe such conspiracy was formed with any of the vendors of the land or defendants; that Thomas was not one of a committee of three empowered by the owners to sell the land; that there ever was a committee empowered to sell the land; but says it is true that Westfall, Cooper, and himself were solicited by the owners to receive offers therefor, but they had no power to sell or by contract to bind the owners (Rec., 34).

He denies that it was from the first his intention to sell the land to whomsoever he and his associates could defraud into buying it; and that he, at any time, knew the title was utterly worthless; or that he, with his associates, conspired or associated with his co-purchasers or

co-defendants to deceive into believing in the validity of said title, or into purchasing the same, whomsoever they could deceive or defraud; he denies that such knowledge of invalidity of title, or conspiracy, existed among the persons charged therewith, either severally or collectively, and denounces the charges as groundless and false (Rec., 34).

He denies that in April, 1883, or at any other time, he and Cooper and Thomas, as a committee, or otherwise, made false and fraudulent representations to the Duffners to the effect that the title to the land was perfect and valid, or that the deed, to be afterwards made to them, would convey a perfect and valid title to the land, except such portions thereof as had been held by actual settlers for more than ten years under claim of title. He denies that he ever represented anything to the Duffners, or either of them, other than to claim a tax title, and that the records could be seen and examined, and avers that he positively declined to sell, assure, or warrant any other right or title than such as they had acquired under the purchase at delinquent tax sale, and that what he said in relation to twenty thousand acres not held by settlers was only an expression of opinion (Rec., 34).

He says that it is not true that he or his associates used means, fraudulently or otherwise, to prevent the Duffners, or either of them, from obtaining from other sources information as to the validity or invalidity of the title to the land, but that investigation thereof was invited, and that he has been informed appellee was warned before the completion of the contract that he was acquiring a tax-title only (Rec., 34).

He denies that he caused appellee to make a troublesome and expensive journey to view and inspect the land, or that he and his co-owners knew the Duffners never would be able to acquire possession of any part of the land. He explains that after the contract had been

signed, in a walk over the town, in a private conversation, not relating in any manner to the sale of the land, he stated that he had been Governor, State Senator, etc., but denies that he ever said to appellee in that conversation "that he was not such a man as would deceive or take advantage of him, or have anything to do with titles to land unless they were good titles," or made any such statements as referred to for the purpose of fraudulently and falsely inducing appellee to make the contract of 24th April, 1883. He avers that such contract was not binding on the owners of the land, but was an offer of the Duffners to give $15,000 for the title to the land. He denies that the price agreed on was $20,000 (Rec., 35). He explains how the price of $15,000 was reached in the negotiations; how Duffners in their anxiety to get the title agreed to pay Thomas $6,500 for services and expenses in procuring the deed; how Thomas solicited the co-operation of the respondent to aid him in the work, and the consent of the Duffners to the agreement and the execution of the writing to that effect. He denies that Thomas and himself, or either of them, ever represented that they were entitled to $5,000 and the other owners to $15,000, but says the proposition to pay $6,500 to procure the deed was an independent proposition made by the Duffners and concurred in, by them in order to secure the deed (Rec., 36).

He admits the payments as alleged, and makes a statement of facts as to the circumstances that took place just preceding the visit of appellee and Fish to Buckhannon in relation to making the deed to appellee alone, and refers to the letters received from appellee which induced him to go to Cleveland at that time, when he assured the appellee if the deed was not obtained he would return the $2,000. The arrangement was then made at Cleveland that if the deed was obtained the appellant was to notify appellee, so that he, with his

counsel, could visit Buckhannon and examine the records touching the title, tax sale, the deed, &c., &c. He wrote appellee that the deed was ready for delivery on 7th June, 1883, and in July appellee and Mr. Fish, his counsel, visited Buckhannon and were engaged for three days in the investigation of the title, and at the conclusion of the investigation Mr. Fish declared he had found everything as represented, and informed appellee he could pay over the money. The deed was carefully read and accepted. Appellant states that when at Cleveland he solicited and invited appellee and Mr. Fish to visit Buckhannon and investigate the title before closing the contract (Rec., 37).

He denies that he represented to appellee "that the attorneys at law practicing at the bar of Upshur County were wholly unreliable; that he used any means to prevent the appellee and his attorney from inquiring about the title, or that any of his associates used any such means, or that he or they by any representations induced the attorney to believe anything in respect to the title (Rec., 38).

He denies that he represented to appellee that some of the owners were dissatisfied with the sale, or that it would require peculiar efforts to induce them to execute a deed, but explains that it was talked of, after the contract was agreed to, that some might object because a much larger price had previously been asked for the land, and he also explains as to the execution of the note of $3,250, and as to the payment of the same to himself, and of the payment of a similar note separately to Thomas (Rec., 38–9).

He denies that he advised appellee's agent to allow the land to remain uncleared for ten years, but says he advised him to first call the settlers together and see and learn the parts not occupied, and to secure the parts unoccupied inasmuch as the lumber trade was depressed;

and, at the instance of the agent, appellee, upon a communication from the agent, paid the $2,800, which appellant had agreed to take for the note of $3,250 (Rec., 39).

He does not admit that the deed from himself and associates conveyed no title whatever, but he says they only undertook to convey such title to the appellee as they had received by the deed to them, and this was well understood by appellee; and he denies that he and his associates well knew when the conveyance was made by them that it was worthless, or that the consideration for which the purchase-money was paid had wholly failed; and he denies that he ever made any representations in respect to the land or the titles thereto which he knew to be false (Rec., 39).

He avers that upon information and belief the tract of land at the time of the making of said contract contained at least 20,000 acres not legally held by actual settlers, and that it contains it now, but that all the statements in relation thereto are expressions of opinion in respect to a matter about which the Duffners could be informed, inasmuch as they had, with a surveyor, visited the land and examined it prior to 24th April, 1883; and furthermore, this is subject to the guaranty of the grantors as expressed in the deed (Rec., 40).

Appellant is not advised of the expenditures alleged in the bill, but denies they were made upon any representation by himself or the grantors, but they were brought about by appellee without solicitation or invitation of any of the grantors or defendants named in the bill. He says it is not true that it was notorious in Upshur County that the title to the land was invalid and worthless at the time the contract was made, or at any other time, nor is it true that he by any efforts or means kept or tried to keep any knowledge which appellee might have learned by inquiry or otherwise from him;

but he made inquiry as to the title, went on the land, and was informed that he was to get such title as the owners had under a tax deed. He denies that the deed made by the clerk to them was wholly void, and explains and sets out the record thereof. He says he made no representations whatever touching the insufficiency of the paper-title of William H. Morton, but explains that they were examined by Mr. Fish, counsel of appellee, who stated it made no difference as to Morton's title for the taxes were charged to him, etc. He made no representations as to the supposed conflict of other titles, but does not admit the land was owned by other persons; but he is informed and believes that if any such interferences or titles existed they were, prior to April, 1883, forfeited to the State. He denies that the interfering grants were matters of notoriety or known to the grantors. He again denies all the allegations of fraudulent and alleged false representations contained in the bill either as to himself or his co-grantors, and sets forth a history of the tax sales and avers a failure to redeem, etc. (Rec. 42).

He says the Duffners were not invited to purchase but visited Buckhannon with a man named Wood, and he had never before heard of the Duffners or Wood; that the Duffners went on the land with their own surveyor, and upon their return first approached this appellant and proposed to purchase the land, all of which was done with the understanding that it was only a tax title; the Duffners had the same opportunity and means of information touching the title as the grantors (Rec., 42–3).

The appellant, Thomas, also answered fully under oath denying the alleged conspiracy between any of the grantors of the land to cheat and defraud appellee, and specifically denies that he was joined with any of them in any such conspiracy. He explains how he became acquainted with the Duffners, and when, and details the negotiation that took place concerning the sale of the land. He

states all the facts relating to the examination of the books, etc., by Mr. Fish, and avers that Fish declared himself satisfied, and announced that the title was as represented, and the deed was then received by the appellee. Appellee discounted the note given him for services because it was paid before it was due. Appellant showed Fish the auditor's office at Wheeling, where he made further examination of the title, and then stated that the records there corresponded with those in Upshur County. He made no representations except that it was a tax title. He had no knowledge of the alleged interferences, and denies that he represented to the Duffners that the title was a valid and perfect title; or that he knew the said title was worthless; or that he conspired and associated with Farnsworth, Cooper, and others to defraud and deceive into believing in the validity of said title, or into purchasing the same, whomsoever they could deceive and defraud; or that he represented to the Duffners that the deed made by the persons who afterwards executed it would convey a valid and perfect title thereto, except as to the settlers, etc. The Duffners were invited to investigate the title, and he denies that any means were employed to prevent them from obtaining information from other sources with reference to the title, or that they were induced by him and his associates to make a troublesome and expensive journey to inspect the land, and states that the journey had been completed before this applicant ever heard of or saw the Duffners (Rec., 72).

It is denied that this appellant or the committee represented to the Duffners that two of the committee were entitled to $5,000 of the $20,000 and that the owners were to receive the remainder; or that he in any manner, or the committee, made or repeated, in the town of Buckhannon, any of these alleged, imputed, and charged representations to the appellee or his attorney; or that they,

by any means, induced such attorney and appellee to believe in the validity of the title, or used means to prevent them from inquiring about, or examining into, the title or ascertaining its vices, if any. He explains that the attorney made a protracted investigation, and was invited by the appellants and others to do so. It is denied that representations were made that some of the persons interested in the land were dissatisfied with the sale and were unwilling to sign the deed, but it is explained that the objections were made for other reasons. He denies that the appellants represented it would require peculiar efforts to induce others to execute the deed; also, that the notes of $3,250, which appellee executed to appellants, were composed of $5,000 of the purchase-money. Cooper never acted in the matter of procuring the deed, except to a very small extent, for which appellant is informed he was paid (Rec., 73).

We have given above substantially the separate answers of the appellants. The other defendants below, who have not appealed upon the ground that the respective judgments against them were too small, have also answered separately under oath (Rec., 47, 51, 54, 56, 61, 62, 63, 66, 74, 75, 77).

The court below, upon the evidence, decreed that the contract of 24th April, 1883, be set aside on the ground of failure of consideration, and ordered the restitution of the money paid thereunder, as well as the other amounts paid to the appellants outside of such contract, with interest on the amounts, as specifically provided for in such decree (Rec., 285–8). From this decree D. D. T. Farnsworth and Philip Thomas have appealed and present the following assignment of error:

The court below entered a decree in favor of appellee under the bill filed by him against appellants, when such bill should have been dismissed with costs against appellee.

The proof adduced by the appellee is at variance with the material and important averments in the bill as to conspiracy, fraud, and misrepresentation. It is alleged that the parties to the agreement, who purchased at the tax sale in 1877, were acquainted with the previous history of the title to Morton, knew that Morton had no title, and that they were acquiring none by such purchase; and especially that they were acquainted with the alleged vices in the title (Rec., 4).

The statements of appellee's witnesses to support these allegations are merely references to expressions of opinions without regard to actual facts. Warple refers to a conversation in which Farnsworth repeated what others said about the title; *but this occurred in 1882* (Rec., 84–5.) The allegations relate to the knowledge of the parties in 1877 and previous thereto. Mr. Whorter, the clerk, explains that he lacked confidence in the title because copies of deeds were recorded instead of the originals. His testimony shows that Westfall, Cooper, and appellant, Farnsworth, always had confidence in their tax-title, and so expressed themselves before and after the sale to the Duffners; they relied on the tax sale under the statutes of West Virginia, and upon the fact that the taxes were charged in the name of Morton only (Rec., 86–87).

S. B. Phillips makes many incoherent statements, but admits that he does not know of any fact or circumstance which shows that the purchasers, prior to or at the time of the sale to Duffners, knew of any defects in the title (Rec., 94). He admits he knows nothing about the interferences (Rec., 95). Mylins' statements in no way sustain these allegations. All of the conversations referred to by him occurred long after the purchase at the tax sale. These conversations were with Thomas who, at the time, was simply the agent of the Hennings (Rec., 98). Farnsworth expressed confidence in his tax-title (Rec., 99). The depositions of Boggess, surveyor, and

Higginbotham, farmer and surveyor, relate to surveys, but it is not proved that the appellants, or any of the grantors to Duffner, had any knowledge of the matters stated, or of the history of these surveys. Boggess relates a conversation he had with somebody from New York, in 1882 or 1883, to whom witness expressed his opinion that the title was worthless. But it turns out that the witness' knowledge was obtained from some lawyer's opinion, and also of his own knowledge that a portion of the land was held by actual settlers. The opinion of Huffman is objected to as evidence, and the title of actual settlers was saved by the deed to appellee. He afterwards met appellant, Farnsworth, and told him what had occurred between the New York man and himself, but Farnsworth insisted that enough of the land could be held to compensate the purchasers (Rec., 102). *This all took place after the sale to appellee* (Rec., 103). There is not a word in the testimony of the appellee or Charles or Matthew Duffner to show the grantors had knowledge of the previous history of the title. In fact they are all silent on the subject.

It is alleged that appellant, Farnsworth, represented to the appellee, for the purpose of inducing him to believe in the title, that he had been Governor, State Senator, and so forth (Rec., 6). Appellant explains the manner in which these statements were made after the agreement or offer of purchase was signed by the Duffners in April, 1883. He admits he was guilty of innocent vanity in making the statements, but denies that he said anything in connection with the conversation to induce appellee to believe in the title to the land, or that they had any bearing whatever upon the transaction (Rec., 35, 208). The allegation is confined to appellee alone. Other witnesses testify by rote to the same statements, but none of them are shown to have been present when the conversation actually occurred between Farnsworth and appel-

lee. Appellee stands contradicted as to the intention and purposes of the statements. A glance at the testimony will show the allegation is a fabrication and is incredible. Appellant, Farnsworth, was in Cleveland in September, 1883, with Thomas. He was not there with him before that time. He then made Ransom's acquaintance, and he was introduced to Baldwin by Joseph Duffner in August, 1883, in Buckhannon. This was the first time he saw Baldwin (Rec., 202, 203). The deed was delivered to appellee and the sale closed 14th July, 1883. Yet we find appellee's witnesses repeating conversations imputed to Farnsworth which are claimed to have been made as an inducement to the purchase of the land, when, as a matter of fact, if such conversations took place, which is not admitted, they occurred one and two months after appellee had paid the money, accepted the deed, and placed it on record (Rec., 202, 203). Baldwin admits the conversation at Buckhannon was in August or September, 1883 (Rec., 121). If he had any such conversation at Cleveland, which is denied, it was in September, 1883 (Rec., 202). Ransom admits the conversation referred to by him with Thomas and Farnsworth was after Duffner had obtained his deed (Rec., 128). He agrees with Farnsworth and Thomas in this (Rec., 180, 202). Appellant, Thomas, explicitly states that he was in Cleveland the latter part of July, 1883, and had not been there prior to that time except in 1851; that he was there again in September, 1883; that he met Farnsworth there in the latter part of September, and introduced him to Ransom; that he never knew Baldwin until he met him in September, 1883, in Cleveland (Rec., 180, 181). It does not seem reasonable that any such conversations took place with Ransom and Baldwin, but if they did they can have no bearing in the case inasmuch as they occurred long after the deed had been executed and delivered

and the purchase-money paid. It is clear that whatever Farnsworth stated in this respect was not intended to influence appellee in making the purchase. And it is just as clear that Thomas' statement about a short service in the Pennsylvania legislature was equally unimportant.

It is alleged that the committee represented to the Duffners at the time the agreement of 24th April, 1883, was signed, that two of their number, to wit, the appellants, were to receive $5,000 and the other owners $15,000, the $5,000 being set apart to appellants for their services as members of the committee (Rec., 6).

This allegation, which is verified by the appellee, is shown by the evidence to be outrageously and willfully false. Matthew Duffner, who was present and signed the agreement, makes no reference to any such representations (Rec., 111–115). Neither does Charles Duffner in any direct manner (Rec., 123–125). The appellee gives his version of the transaction, which is not exactly in accordance with the facts (Rec., 131). He admits, however, that he and the other Duffners became parties to the arrangement by which the owners were to get $15,000 for the title to the land, and appellants were to have $6,500 for services and expenses in obtaining the deed, and that they signed written agreements separately to this effect (Rec., 131). When appellee's counsel, Mr. Fish, examined the deed he inquired how it was that the deed only called for $15,000 when he understood the consideration was $20,000. Appellee made a motion with his hand and said in substance: That is all right; we understand this (Rec., 150, 165, 198, 215). It is established by uncontradicted evidence that this arrangement was suggested by the appellee and agreed upon by the Duffners in a conversation with Thomas in the German language, which Farnsworth did not understand. Farnsworth knew nothing of the proposition until it was

reported to him by Thomas and assented to by the Duffners He then agreed to join Thomas in obtaining the deed for half of the amount. Appellee gave his obligations to appellants, respectively, for $3,250, and subsequently paid them by discounting them before maturity (Rec., 176–178, 206–207). It will be observed that the allegation is not sustained by the proof, but if there is any fraud or conspiracy shown in this respect it was suggested, instigated, and carried into effect by the appellee.

The appellee is in a court of equity, therefore, asking relief upon evidence which shows that he and the other Duffners fraudulently conspired with a committee, as he claims it to have been, to cheat and defraud the owners of the land, or the principals of such committee, out of $5,000. A court of equity should not intervene to give relief to any of the participants in such fraud, upon their own showing, in a conspiracy with parties asserted to be agents, to cheat and defraud their principals. In such a case the parties are in equal fault and equal in guilt, and the law leaves them where it finds them. There are no questions of public policy connected with the contract of sale, and we think this rule applies to the appellee.

1 Sto. Eq. Jur. (13 ed.), § 298 and notes.
Randall *v.* Howard, 2 Black., 588–589.

The grantors were not under promise to furnish an abstract of title. There is no evidence that an abstract was demanded and refused. If there had been any ground for such demand it was waived by the subsequent acts of the appellee.

It is charged that Farnsworth fraudulently represented that the attorneys at law practicing in Upshur County were wholly unreliable, and appellee relying on such representation did not employ counsel there or from other

parts of West Virginia, but brought with him from Cleveland, Ohio, an attorney not learned in the laws of West Virginia (Rec., 7).

Only a casual reference to the evidence will show the untruthfulness of the charge. The appellee is the only Duffner that testifies on this point (Rec., 133). The evidence clearly establishes the fact that appellee intended all the time to rely on the advice of Mr. Fish, who had been his counsel in Cleveland for years, as to the title to the land. He so expressed himself before he became acquainted with the appellants or any of the grantors, and carried out his expressed intention in this respect all through the negotiations. On his way with Col. Wood to inspect the land he was delayed at Weston, and in a conversation, on the subject of purchasing the land, with a German named Brinkman, he was warned against tax titles, and advised to consult a lawyer in the locality, and the names of four or five were given him. Appellee said he would be careful. On his return trip he was again cautioned in this respect by Brinkman, and the same attorneys mentioned, but appellee replied that he had a good lawyer in Cleveland in whom he had full confidence; that he would prefer a lawyer from his own State (Rec., 169, 213). When the negotiations were in progress at Buckhannon in April, 1883, appellee expressed the same intention (Rec., 178). He acted upon his intention and brought Fish, his Cleveland lawyer, to Buckhannon, where he made a thorough investigation of the title, lasting three days, at the end of which he declared the title as represented, and upon his opinion and decision the sale was closed by the payment of the balance of the purchase-money and the acceptance of the deed (Rec., 138–146).

It is alleged that Farnsworth, the committee, and the owners repeated to the appellee and Mr. Fish, his counsel, such representations, and by their fraudulent conduct

and representations induced such attorney and the appellee to believe in the validity of the title, and also used means to prevent the appellee and such attorney from inquiring about and ascertaining the vices therein; that for such reason neither said attorney, the appellee, nor anybody in his behalf investigated the title; that appellee did not rely on such attorney to make any investigation, nor rely on the investigation actually made by him, but still relied on the representations made by appellants (Rec., 7).

Upon a review of the evidence these will be found to be most remarkable statements. Mr. Fish, the Cleveland lawyer, and appellee arrived at Buckhannon, as before stated, and immediately began the investigation of the tax title in the clerk's office. The appellants and grantors kindly offered to aid them in the investigation in every way possible. This was all they did. Fish made a minute and thorough examination into the tax title, and announced that he had found it as represented, that it was all right, and that he could not find anything out of the way in it. The grantors present were all anxious for him to be fully satisfied, and so expressed themselves (Rec., 138–143; 149–150; 152–153; 160; 165–166; 179; 194; 198; 211; 214–215). And appellee admits Fish told him he found the title as represented (Rec., 131). This overthrows entirely the allegations above referred to and noted, as to the efforts of Farnsworth, or others, to deceive and mislead appellee and his counsel Fish.

Appellee relied entirely on his counsel, Fish, as to the title, and accepted the deed, paid the balance of the purchase-money, and finally executed the contract of purchase as a result of his investigation and opinion.

The charge that appellee and his counsel were watched to prevent them from obtaining information as to the title, from any source whatever, is as absurd as it is groundless. No such proceedings were thought of or took place.

Appellee introduced some witnesses in support of this charge, but they either refused to testify to anything of the kind, or contradict each other (Rec., 95, 99).

It is charged that appellants falsely and fraudulently represented that some of the owners of the land were unwilling to sign the deed, and that it would require peculiar efforts to induce them to do so, by reason of which appellee was induced to pay appellants $1,500 for services and expenses in obtaining the deed (Rec., 8). An allegation almost similar to this has been disposed of heretofore. The $1,500 is a part of the $6,500 there referred to, and for which appellee executed two notes for $3,250 respectively to the appellants, and afterwards discounted them before maturity. There was no fraud or misrepresentation in the transaction. This is so from appellee's own admission (Rec., 131). Also from the other evidence (Rec., 176–8, 206–7). But if fraud existed appellee was a party to it, and we have shown by the authorities, *supra*, he can not take advantage of it.

There was nothing in the transfer that required the grantors to do more for the appellee than had been done for them in receiving the deed from the State. There was no promise to put appellee in possession. On the contrary, the appellee was to have a survey of the land made as soon as practicable after the delivery of the deed (Rec., 231). He asserted actual possession, however, in August, 1883, when he employed Watson Westfall, the county surveyor, to go with him on and over the land and point it out to one Baldwin, of Ohio, for the purpose of selling him all of it, or an interest in it (Rec., 117, 203). He also paid the taxes on the land (Rec., 287). This was subsequent to receiving and recording the deed by appellee (Rec., 24). He could not have offered to sell the land to Baldwin upon any other ground than actual possession under his deed. In fact Baldwin postponed the inspection of the land until appellee should get the deed (Rec., 117).

The Supreme Court of West Virginia has held that "when a person enters upon land claiming it under color of title by deed or other writing, he acquires an actual possession to the extent of the boundaries contained in such deed or writing, unless some part of the land is in the possession of some other claimant; and it is immaterial whether such color of title be a good or bad, legal or equitable title."

Adams *v.* Alkire, 20 W. Va., 485.
Overton *v.* Davisson, 1 Gratt, 211.
Shanks *v.* Lancaster, 5 *Ib.*, 110.

The evidence does not disclose that any effort was made by appellee to ascertain whether or not there were 20,000 acres of the tract of land over and above that held by actual settlers. Inasmuch as there is an express guaranty in the agreement or offer of purchase, and also in the deed, upon this subject, the appellee should show, before he is allowed to take advantage of such guaranty, an ascertainment of the number of acres in the tract, less the quantity so held by actual settlers. If a failure of the guaranty appears, then appellee would be entitled to recover according to any such failure, in a proper action.

Three particular reasons are assigned why the title was worthless and invalid (Rec., 10, 11). They are matters that were alike open to the knowledge and information of appellee, as well as to all the other parties to the transaction. The first reason states that there was no record or note of any kind made in the clerk's office of the sheriff's report within ten days after the tax sale. Such report was made by the sheriff and noted in the clerk's office in time (Rec., 40, 41, 44, 46). This was one of the matters that was subject to the investigation of Mr. Fish, appellee's counsel. There is no doubt that he made the proper examination (Rec., 140–1, 153, 160, 165, 179, 194, 198, 214). We apprehend the failure to make

the note of the sheriff's return of sale in the clerk's office is not such an irregularity as would render the tax sale void as to appellee. The object of such a record seems to be for the protection of those who are entitled to redeem from the tax sale, and it may not be taken advantage of by outsiders (Acts W. Va., 1872–3, Ch. 117, § 25).

The second reason, like the first, was open to the information of appellee as well as to the other parties. It is admitted the land was returned delinquent in the name of William H. Morton, but alleged that his title was composed of fraudulent papers admitted to record in Upshur County. Mr. Fish also examined the books and records on this point. What are called in the allegation fraudulent papers of record, were all examined, and their proper legal effect upon the title, discussed. Mr. Fish decided that inasmuch as the land was charged on the tax books in the name of William H. Morton only, it made no difference about the character of these papers. But the matters set up in this, and the first particular reason assigned, were found by Mr. Fish, before the sale was finally closed, to have been as represented (Rec., 140–1, 153, 160, 165, 179, 194, 198, 214).

The third reason particularly assigned was not spoken of at any of the negotiations, and no representations were made by the appellants and grantors in relation thereto. None of the Duffners testify to such representations. The witness, Simons, did converse with appellee, however, upon the subject of conflicting surveys and interferences in connection with the survey, when he was on the land the first time, and spent Sunday at Simon's house (Rec., 235–239). This was sufficient to have put appellee on inquiry in regard to these matters. The proofs show, therefore, that appellee had more knowledge and information concerning conflicting surveys and interferences than either of the appellants. But any and all titles, if any, of persons claiming under the patents named, or

otherwise, were vested in the State of West Virginia by purchase for delinquent taxes, and by forfeiture, and the State transferred such title to Farnsworth and others, who purchased at the tax sale and acquired the title of the State; and Farnsworth and his co-grantors conveyed this title to the appellee (Acts W. Va., 1871, Ch. 194, p. 247). Appellee does not pretend, in his particular allegation, that any of the titles relied on by him, and set out, are better than the one obtained by him from Farnsworth and others, but admits that he is unable to state that any of them are better than the one conveyed to him (Rec., 11).

It is unmistakable, from the evidence, that appellee started out to negotiate for a tax title, with full knowledge of the character of such title. It is likewise plainly proved that the appellants and grantors never represented that they held or owned any other than a tax title, or offered any other title for sale.

It was notorious that the title of the grantors was acquired at a delinquent tax sale from the State of West Virginia.

And it is plain from the evidence that there was not, and could not have been in the nature of the surrounding circumstances, any fraud, conspiracy, or misrepresentation in regard to the title. Appellee was told it was a tax title, and heard it spoken of and discussed as such, at all times and places in West Virginia. Appellants refused to agree to convey to him anything but a tax title, or in other words, just such title as the grantors had acquired from West Virginia at the tax sale. The contract of April, 1883, was signed by the Duffners and contained a clause that "the deed shall convey all the rights and title to said land as conveyed by the State in a deed made to said company" (Rec., 19). The deed recites that the "parties of the first—do grant unto the said parties of the second part all their rights, title, and

interest vested in them by a deed of conveyance for a certain tract or survey of land made in accordance with the statutes of the State of West Virginia" (Rec., 20). In view of all the facts appellee could not possibly have been mistaken or misled as to the character of the title. There were different opinions expressed by different persons in regard to the tax title of the grantors, which is always the case in matters of this kind. None of these opinions were based on facts or investigation. But, one thing is overwhelmingly established by the proof, to wit, that appellants and the grantors to Duffner always expressed opinions of confidence in their tax title, and gave their reasons for them. They expressed such opinions when they purchased the land at the tax sale, before they knew the Duffners, at the time of negotiating the sale with them, and afterwards. Such opinions were not expressed therefore for the purpose of conspiracy, fraud, and misrepresentation. We think it clear from the evidence that no misrepresentations were made, and that no fraud or conspiracy existed, as alleged. Nor has it been proved that there was any such conduct on the part of appellants, or the grantors, as prevented the appellee from obtaining information from all sources as to the status of the title.

But if all the misrepresentation had been made, as alleged, yet the appellee would not be entitled to relief *because he did not rely on them.* He relied on the opinion of his counsel formed after a full and careful investigation of the facts and the law. Such counsel resided in his own city, and he had known him and employed him for fifteen or twenty years, and had the utmost confidence in him (Rec., 138, 146; 169; 178; 213). There are some familiar rules of law in reference to misrepresentations which may be stated here, and they are peculiarly applicable in this case. The misrepresentation must be of matter of fact and not of law; it must be of a fact as

distinguished from a mere expression of opinion; it must be of a fact at the time, or previously existing, and not a mere promise for the future; it must be of a material matter; it must be relied upon by the person to whom it is made, or whose action it is intended to influence. These rules of law are well settled, but, nevertheless, we cite some of the authorities:

Kerr F. & M., 73 to 81, and notes.
8 Am. & Eng. Enc., of L., 635 to 637, and notes.
Slaughter *v.* Gerson, 13 Wall., 379.
Yates *v.* Pryor, 6 Eng., (11 Ark.) 58.
2 Pom. Eq. Jur., § 893.

The appellants made no material or false statements as to facts; the evidence shows they expressed opinions as to the validity of the tax title, which was matter of law; they did not represent that the title to be transferred by the deed to be executed *in the future* would convey a perfect and valid title as alleged, and the allegation in this respect is bad because it is based on matter of law and mere promise for the future; the representations of appellants were not relied on by appellee. These contentions are fully established by the evidence. And the law, as above stated, was very recently reaffirmed by Mr. Chief Justice Fuller *in Farrar* v. *Churchill*, 135 U. S., 609, 615, and cases cited.

In the case at bar the money was paid, the deed delivered and accepted, and the contract fully executed, and a court of equity ought not rescind it except upon the very strongest showing of fraud, or of palpable mistake. Neither exists here. The parties should be left, therefore, to the covenants or other provisions in the deed. It has been decided that an executed contract, as in the case of a deed made and delivered, can not be rescinded

where the mistake is as to the title. This is especially so where the deed is taken without warranty. In this case a warranty was asked and refused.

Thompson *v.* Jackson, 3 Rand., 504, and authorities cited.
Carroll *v.* Wilson, 22 Ark., 32 *et seq.*
Jackson *v.* Ashton, 11 Pet., 229.
Sutton *v.* Sutton, 7 Gratt., 234, 238.
Abbott *v.* Allen, 2 Johns. Ch., 251.
Gouverneur *v.* Elmendorf, 5 *Ib.*, 84.
Hill *v.* Bush, 19 Ark., 522.

In *Walker* v. *Hough*, 59 Ill., 375, it is held that to justify a court in rescinding a contract executed by both parties, on the ground that one of the parties was induced to enter into it through fraud practiced by the other, the testimony must be of the strongest and most cogent character and the cause a clear one.

"Equity will not relieve against a contract of sale, because a fact *lying in doubt* in relation to the subject-matter of the sale turned out differently from what was expected by both parties."

5 Wait., Act. and Def., 514, § 3.

Appellee purchased the tax title to the land for speculative purposes but was disappointed. He accepted such title after he had exercised his reserved right to investigate it. The means were at hand for both parties to investigate and obtain information alike. He inspected the land personally, under the guidance of a surveyor employed and paid by him, before he offered to purchase it. He made this inspection before he was acquainted with the appellants or the grantors, and without their solicitation or knowledge. He investigated and verified the tax title in person, and by an examination made by his counsel from Cleveland, Ohio, and as

a result thereof received the deed. He did not rely on the representations of the appellants or the grantors as to the title, and he is not, therefore, entitled to the relief asked.

2 Add. Tor., § 732 *et seq.*, and notes.
Sutton *v.* Sutton, 7 Gratt., 238.
Pasley *v.* Freeman, 3 T. R. (Durn. and E.), 56.*

It has been held by the Supreme Court of West Virginia that " if it appears that the purchaser has resorted to proper means of verification so as to show that he in fact relied on his own inquiries, or if the means of investigation and verification were at hand, relief will be denied."

Tudington *v.* Renick, 7 W. Va., 273, 281–2.
Wamsley *v.* Currence, 27 *Ib.*, 543.
Summers *v.* Kanawha, 26 W. Va., 159, 172.

Numerous other authorities are to the same effect:

44 Am. Dec., 449.
2 *Ib.*, 73, 78.
1 Sto. Eq. Jur. (13 ed.), § 149 and notes.
2 Kent, 485.
Kerr F. and M. (Am. ed.), 82.

The law denounced in *Dillman* v. *Nadlehoffer*, 119 Ill., 567, S. C. 7 N. E. Rep. 88, strongly favors the appellants here. In that case the vendor represented he had a valid patent. The fact was he had a patent; its validity was a question of law.

So in this case the fact is the grantors had a tax title, but their expressions of opinion as to its validity related to matters of fact and not of law, and the validity of the title was a question of law. It is held in *Upton* v. *Tribilcock*, 91 U. S., 45, 50, that a misunderstanding or mistake of law affords no grounds of relief.

In cases like the one now under consideration there can be no restitution of money.

Sutton *v.* Sutton, 7 Gratt., 238.
Gouverneur *v.* Elmendorf, 5 Johns., ch. 79:
7 Am. Dec., 187–191, and citations.

By reference to the decree it will be observed, however, that the court went to the utmost extremity in making restitution. It restored to appellee money claimed to have been expended by Schmeider, who laid around Buckhannon for many months doing nothing. The taxes paid by appellee after he got his deed are also restored to him although there is no prayer in the bill for such restitution (Rec., 287).

While in West Virginia the title of the purchaser at a tax sale is free of all trusts, mortgage liens, and other incumbrances (*Summers* v. *Kanawha, supra*), yet it would be a novel if not alarming doctrine, with the whole record of the tax proceedings before the public, and the vendee as well, to hold he could claim a warranty in such a case as this; and if he could it is quite sure he should go to law and not equity for damages. (See authorities, *supra.*)

If Farnsworth and his co-grantors had been silly enough to give a warranty, which is not the case by any means, appellee's recourse was at law and not equity; and there is nothing special or particular in this case to take it out of that rule, even if all be true as claimed by appellee.

An attorney (Fleming) of Buckhannon testifies to a conversation with appellants of a professional character. The conversation is satisfactorily explained by both appellants (Rec., 182, 217–18). Although not objected to, yet it is objectionable as privileged. It is intended to prejudice the appellants in the suit, and if the proper objection had been taken its admission would have been cause for reversal under *Alexander's case*, 139 U. S., 357 (Rec., 89–92).

At the time the offer of purchase was signed by appellee in April, 1883, he paid $100; subsequently he remitted $2,000 to Farnsworth. But Farnsworth gave his promise that if the deed should not be obtained from the owners and delivered, he would refund the $2,000 to appellee (Rec., 220–1). Appellee was satisfied with the promise because Farnsworth was reliable and responsible. Appellee could have withdrawn his offer of purchase, therefore, at any time previous to the examination of Fish, and his announcement that the title was as represented, and that he could pay the money and take the deed, without having incurred anything but a trifling loss. He preferred, however, to take the advice of his counsel, and stand by his bargain. He knew all about the tax title in time to "back out," but he chose to complete or affirm it, and he can not now be allowed to complain of misrepresentation.

Whiting *v.* Hill, 23 Mich., 399.
Pratt *v.* Philbrook, 41 Me., 132.
Bridge *v.* Penniman, 105 N. Y., 642.

We respectfully submit that the decree in this cause should be reversed.

A. H. Garland,
H. J. May,
For Appellants.

Office Supreme Court U. S.
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No 69

IN THE SUPREME COURT OF THE UNITED STATES.

DANIEL D. T. FARNSWORTH & PHILLIP THOMAS, *Appellants*,

vs.

JOSEPH DUFFNER, *Appellee*.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

BRIEF FOR JOSEPH DUFFNER, Appellee.

HENRY M. RUSSELL.

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HENRY M. RUSSELL.

The appellants have neither filed an assignment of errors nor a brief, and we are left to remember the positions taken by them in the court below, and to guess at those which they will take in this court. Under these circumstances it is perhaps proper that the appellee should present a statement of the case.

A large tract of land containing about forty thousand acres and extending into three counties was included within the boundaries of what was known as the "Thomas Wilson Survey." This tract was entered upon the assessment books in Upshur county for the year 1876 in the name of William H. Morton, and, the taxes not being paid, was returned as delinquent, and was sold by the sheriff on the twelfth day of December, 1877. The statute law of West Virginia makes it incumbent upon the owner of land to have it entered on the land books of the assessor, and imposes a forfeiture for the failure to enter it. This statute imposes a correlative obligation upon the assessor to enter upon his book any tract of land and in any name which may be suggested to him. In this

manner it has become not unusual for persons with the most worthless titles to have lands entered in their names upon the land books, in the hope either of taking advantage of some forfeiture on the part of the holder of a better title or of having their own worthless title sold for the non-payment of taxes and thus obtaining in another name a deed which on its face would seem to convey a title from the State. This statute is found in Chapter 31, Section 39 of the Code of 1887, and is as follows:

"It shall be the duty of every owner of land to have it entered on the "land books of the county in which it or a part of it is situated, and to "cause himself to be charged with the taxes thereon and pay the same. "When for any five successive years after the year one thousand eight "hundred and sixty-nine, the owner of any tract of land containing one "thousand acres or more, shall not have been charged on such books with "a state tax on said land then by operation of law, and without any pro- "ceeding therefor, the land shall be forfeited and the title thereto vested "in the state. But if for any one or more of such five years the owner "shall have been charged with state tax on any part of the land, "such part thereof shall not be forfeited for such cause. And any "owner of land so forfeited, or of any interest therein, at the time of the "forfeiture thereof, who shall then be an infant, married woman or in- "sane person, may, until the expiration of three years after the removal "of such disability, have the land, or such interest therein, charged on "such books, with all state and other taxes that shall be, and but for the "forfeiture would be chargeable on the land or interest therein for the "year one thousand eight hundred and sixty-three, and every year "thereafter with interest at the rate of ten per centum per annum, and "pay all taxes and interest thereon for all such years, and thereby re- "deem the land or interest therein or any part thereof: *Provided*, such "right to redeem shall in no case extend beyond twenty years from the "time such land was forfeited. And when for any five successive years "since the ninth day of April, one thousand eight hundred and seventy- "three, the owner of any tract or lot of land, less in quantity than one "thousand acres, shall not have been charged on such books with state "tax on said land, then by operation of law and without any proceedings "therefor, the land shall be forfeited and the title thereto vested in the "state. But if for any one or more of such five years the owner shall "have been charged with state tax on any part of the land, such part "shall not be forfeited for such cause. If the owner of any such tract "or lot of land or any person having an interest therein, shall at the "time of the forfeiture thereof be an infant, married woman or insane "person, he may redeem the said land or interest therein, or any part "thereof, in the same manner and within the same time as is herein "provided in regard to tracts of one thousand acres or more. A record

"of all real estate so forfeited which shall come to the knowledge of the "auditor shall be kept in his office, in which shall be shown the name "of some former owner or supposed owner, the quantity or supposed "quantity, and local or other description of the real estate, for what "years the owner was not charged with the taxes, and when the real "estate became forfeited. Such record shall be prima facie evidence "that the owner was not for such years charged with the taxes on such "real estate, and that he did not cause it to be entered and charged "with such taxes as aforesaid, and that the real estate was forfeited and "vested in the state at the time specified. In order to enable the aud-"itor to make such record, it shall be the duty of the clerk of the county "court of each county in which such real estate ought to have been en-"tered and charged with taxes as aforesaid, upon discovering any such "failure, to certify to the auditor all the facts in relation thereto."

As the sheriff before selling makes out and publishes a list of the lands to be sold, with the amount of the charges upon each tract, and as this amount is the minimum for which the tract will be sold, it is possible for intending purchasers to know in advance of the sale the least price for which they can purchase a particular lot, or at least that title or claim to it which the sheriff proposes to sell, and in the case of a worthless title the purchasers can also usually know in advance the maximum price which they will be required to pay, for the nature of such titles, especially to large tracts of land is usually sufficiently well known in the community, and one who wishes to purchase may do so without opposition. On the day before the sale by the sheriff a number of the defendants agreed among themselves to buy in this tract of forty thousand acres at the ridiculously small price of $642.20, that being the amount mentioned in the sheriff's statement. [Record 13, 14 and 15.] After making this purchase, as the purchasers were numerous a committee of three was appointed from their number to place the land upon the market and a man named Wood was also employed [Record 167] through whom the land was brought to the attention of the appellee, Duffner, who resided in Cleveland in the State of Ohio. Duffner, with his son and brother, went to the town of Buckhannon, the county seat of Upshur county, in the Spring of 1883 at the invitation and in company of Mr. Wood. Upon arriving there they met Daniel D. T. Farnsworth, who was one of the committee, and went out in charge of a surveyor to look at the land. There is some conflict in the evidence with regard to the various statements that were made commendatory of the land and its title, but it is not disputed that the party were shown a large tract of finely timbered land and returned to Buckhannon well pleased with what they had seen. By that time another member of the committee, Phillip Thomas, was there, and Farnsworth

and Thomas negotiated with the Duffners a sale of the land, representing to them that the title was good, except for certain actual settlers upon the land, and that these settlers held less than half of it. The vendors wanted $20,000, and after the Duffners had agreed to give this price, Farnsworth and Thomas represented to them that some of the owners of the land were disinclined to sell it at that price, and that strenuous efforts on the part of Farnsworth and Thomas would be necessary to procure the signatures to the deed, and, in addition to that, that they were entitled to remuneration for their services as members of the committee, so that on the whole, it would be well to fix $15,000 as the price of the land and for the Duffners to give to Thomas and Farnsworth $6,500 on these accounts. It was so arranged, the Duffners thereupon signing a contract to pay for the land, [Record 29] and giving to Thomas and Farnsworth each a note for three thousand two hundred and fifty dollars. Soon after returning home it appeared that the appellee would alone be able to supply the purchase money, and his brother and son made over to him their interest in the purchase and afterward executed a quit-claim deed to him. When the vendors were ready with their deed, which took some time to have prepared and have acknowledged, Duffner went again to Buckhannon accompanied by Charles Fish, a Cleveland attorney. They were taken in charge by the committee and cajoled through what Fish probably thought, in his ignorance of what a West Virginia land title really is, was an examination of the title, and after this was finished the transaction was closed by the delivery of the deed and the payment of the purchase money. The appellee claims that he and Fish were deceived by fraudulent representations with respect to the title, by the concealment of facts within the knowledge of the defendents which would have put them on inquiry, and by studied efforts on the part of the defendants to prevent a proper investigation of the title. The title conveyed to the appellee and his co-purchasers was absolutely worthless. The defendants never had possession of a foot of the land, and were never able to put the appellee into possession of it, nor did he ever get any portion of it under his deed or otherwise. After the delivery of the deed however, the defendants Farnsworth and Thomas continued to keep up the deception until they had, at an enormous discount, disposed of the notes which the appellee had given to them personally. It was not until after this that the appellee attempted to take possession of his purchase, when he discovered that he had really acquired nothing, but had been defrauded out of the $15,000 named in the deed and the $6,500 which he had agreed to pay to Farnsworth and Thomas, and of which he in fact paid all but a very few hundred dollars.

Upon discovering the fraud the appellee brought an action for deceit

in the court below, on the law side thereof, and obtained a verdict against the defendants for over $17,000. On a motion to set aside this verdict, the court below declined to grant the motion, but held the verdict without rendering a judgment, and directed the filing of a bill on the equity side of the court, which would make it possible to adjust the liabilities of the defendants among themselves and to confine the recovery by the plaintiff to decrees against the several defendants for the amounts of the appellant's money which they had respectively received. The present bill is the result of that order.

After answers had been filed and proof taken, the court below reached the conclusion that there had been an absolute failure and absence of consideration to the appellee for the money which he had paid out to the defendants, and proceeded to decree against those of the defendants who had been found within the district and served with process, for the amounts which they had received respectively. The court also decreed that Farnsworth and Thomas should refund to the appellee that portion of the $6,500 which had been paid to them, as already stated. Thomas was not one of the owners of the land, but acted for some Pennsylvanians who were never served with process. Farnsworth, in addition to the portion of the $6,500 which he had received, was the owner of a share in the land, and as such had received a portion of the $15,000. A separate decree was rendered against Farnsworth on this account for $469.86, [Record 288,] and a decree against Farnsworth & Thomas jointly, was rendered for $7,157.20 [Record 287]. The appellee complained that the facts entitled him to a decree for the whole of his money against the parties who were before the court, but the court below declined to take that view, and limited its decree in the manner which has been stated.

In 1 Story's Equity Jurisprudence, § 246, it is suggested that gross inadequacy of price furnishes the most vehement presumption of fraud. Mr. Kerr, in his work on Fraud and Mistake, page 187, intimates the same rule, and in a note it is suggested that where a mere bubble has been received and paid for, the contract will be rescinded. In view of this rule, on which the court below acted, it is perhaps unnecessary to discuss the somewhat vexed question whether fraudulent representations with respect to title to real estate, can serve as the basis of an action. In the case of *Andrus* v. *St. Louis Smelting & Refining Company*, 130 U. S. 648, this court suggest that not only representations as to collateral matters, but also direct representations by the vendor as to his having title to the property may be the ground of an action where the vendor does not hold in good faith under an instrument purporting to transfer the premises to him. The vendors in this case never had possession, and the facts proven show that while they had a deed, the claim which

they made under it was not made in good faith. What the defendants said as well as what they concealed would, without regard to close questions as to what representations may be actionable, be sufficient to bring this case under the principle of *Boyce* v. *Grundy*, 3 Peters 210, which is cited with approval in *Farrar* v. *Churchhill*, 135 U. S. 621. But if it be deemed important to inquire whether misrepresentations as to the title to the land may be the basis of an action for deceit, the law of West Virginia upon that subject should have a controlling effect in determining the rights of the parties in the present transaction, and this for two reasons: First, the transaction occurred in West Virginia, and related to land situated in that state: Second, the nature of land titles in West Virginia, which differs from many other states in that regard is such, or was such at the time of this transaction, that a question of title was necessarily a mixed question of law and fact. The drastic remedies applied under the provisions of a new constitution have very happily furnished relief ~~for~~ from the evils growing out of unsettled titles, but at the time when the transaction in litigation occurred it was very difficult for any person to ascertain whether a title, in the less thickly settled portions of the state, was good or bad. The state government of Virginia issued patents indiscriminately for thousands of acres of land in the western portion of the old state, and no requirement existed that these patents should be recorded in the counties in which the land was situated. No precautions were taken to avoid issuing a number of patents which should include the same land, unless that be called a precaution of the kind which consisted in a permission to the applicant for a patent to cause it to be so drawn as to except by general words what was obviously already covered by patents. This gave rise to the curious system of "inclusive grants" discussed by this court in *Halsted* v. *Buster*, 140 U. S. 273. With regard especially to large surveys, the character of the titles was rather a matter of tradition in the community than of record. The Supreme Court of West Virginia in *Dickinson* v. *Railroad Co.*, 7 W. Va. 425, 426, has recognized as the law of the state the rule that representations as to title belong to the actionable class of fraudulent misrepresentations. It is also unimportant whether regard be had to the positive statement of what was false, or to the concealment of facts within the knowledge of the defendants, a disclosure of which would have put the appellee upon notice of the defects in the title. If the result is accomplished, it is unimportant whether the means of accomplishing it are words or acts of the defendant. The gist of the action may be the concealment or suppression of material facts not equally within the knowledge or reach of the plaintiff. *Stuart* v. *Wyoming Ranch Company*, 128 U. S. 388. The evidence in the case which shows that the defendants concealed important information from the appellee also shows that they

did not claim in good faith the land which they pretended to sell to him. Long before the sale to Duffner, these vendors presented to the county court of Upshur county a petition for a reduction of the assessment on their land, in which they stated that the tract did not contain over twenty thousand acres, after deducting therefrom the amount of the older and better claims. [Record 283.] The clerk of the county court of Upshur county called Farnsworth's attention to the obvious defect in the title to this land. [Record 86.] Another witness told the defendant Thomas that the sale which he was about to negotiate was a "wild-cat scheme." [Record 93.] Another witness told Farnsworth, before the sale to Duffner, that the title was worthless, and gave to him a copy of an opinion upon the title which had been written by Judge Hoffman, one of the judges of the Supreme Court of the state, in which the title had been condemned as worthless. [Record 102.] This opinion is printed on pages 147 and 148 of the record, and it cannot be doubted that, if its existence had been made known, Duffner would have declined the purchase.

Passing for the monent these questions of fraud and misrepresentation, or treating them merely as in aid of the position assumed by the court below with reference to the absence of consideration, let us see in what the latter consisted. A large part of the decree complained of was for money obtained by Farnsworth and Thomas on the representation that the owners of the property were unwilling to sell at the price named and that extraordinary exertions would be necessarry on their part to procure a deed. The bill alleges that such representations were made and that they were false. The answers of Farnsworth and Thomas while seeming to deny, really, when read in the light of the written contract and the conceded facts, admit the making of the representations. Neither answer pretends that these representations were true. The absence of any consideration for this money, therefore, and the obtaining of it by false representations may be said to have been admitted and not to have been in issue of the cause. But if the whole transaction should be considered from the same point of view, and the right to recover this particular sum should be made to depend upon the absolute worthlessness of the deed which the defendants received at the tax sale, and the consequent worthlessness of the deed which they made to Duffner, the case is clearly made out. The bill says, [Record 10,] that the tax deed made to the defendants was void, and that there was no note or record of any kind in the office of the clerk of the county court of Upshur county of the sheriff's report of his sale until more than ten days after the making of the sale. The answer of Farnsworth contains an averment [Record 40] that there was a record made by the clerk in his office of the report of sale and "by that record it is shown that the

record was made on the 22nd day of December, 1877." The answer quotes a certificate made by the clerk to the copy of the sales list, which certificate uses the language: "as returned to me by said sheriff *this* 22nd day of December, 1877." From the use of the word "this" the defendants wish it to be inferred that the clerk, on the 22nd day of December 1877, made a note or record in his office of the return of the list. With his answer, however, Farnsworth files a copy of the entire paper, which is marked "Exhibit G," and found on page 44 of the record. This exhibit directly contradicts the averment of the answer in that regard, as well as any inference which might be drawn from the language of the certificate quoted in the answer. The truth is, the certificate quoted in the answer is not a note or record belonging to the office of the clerk at all, but is merely a certificate that the paper to which it is appended is a true copy of the list. Exhibit "G" contains an express certificate by the clerk that the list was *entered of record* and certified to the auditor on the 10th day of January 1878. The certificates on pages 45 and 46 of the printed record manifestly do not there appear in the order in which they were appended to, or endorsed upon the paper itself, or at any rate not in the order in which they were made, for those have been copied first which are last in date.

The answer of Thomas contains no denial of the worthlessness of the tax deed, but only of his knowledge that it was worthless. [Record 72.] The absence, therefore, of any note or record of the sheriff's sale is admitted by Thomas and proved by the exhibit with Farnsworth's answer. It may be taken as an established fact in the case.

The Code of 1868, chapter 31, sections 12, 13 and 14, which was in force at the time when this transaction occurred, provided as follows:

"12. The sheriff or collector who made the sale, shall forthwith "make out a list of sales so made, with a caption thereto in form or "effect as follows:

"List of real estate sold in the county of ——— in the month (or "months, as the case may be) of ——— eighteen ——, for the non-pay- "ment of the taxes charged thereon, in the said county, for the year "(or years, as the case may be) of eighteen——." Underneath shall be "the several columns mentioned in the tenth section of this chapter.

"13. There shall be appended to such list an affidavit in form or "effect as follows:

"I, A. B., sheriff (or collector or deputy for C. D., sheriff or collector) "of the county of ———, swear that the above list contains a true ac- "count of all the real estate within my county which has been sold by "me, as well as a list of all the real estate redeemed, and the names of "the persons who redeemed the same during the present year, for the "non-payment of taxes thereon for the year ——, and that I am not now,

"nor have I at any time been, directly or indirectly, interested in the "purchase of any of said real estate. So help me God. Which oath "shall be subscribed and taken before some person authorized to admin "ister oaths.

"14. The lists of the sale and redemption of lands with the certifi- "cate of oath attached shall, within ten days after the completion of "such sale, be returned to the recorder, who shall within twenty days "thereafter, make an accurate copy thereof in a well bound book, and "transmit the original to the auditor."

The Supreme Court of the State of West Virginia in *Barton's Heirs* v. *Gilchrist*, 19 W. Va. 223, held that the failure of the recorder to make and enter in his office a note or record of the return of the sheriff was such a fact appearing upon the face of the proceedings of record in the office of the recorder as rendered invalid the recorder's deed to the purchaser, and that unless such return was made and noted within ten days the deed was wholly void. In later legislation the name "clerk of the county court" has been substituted for that of the recorder. This case has been followed in *McAllister* v. *Cotrill*, 24 W. Va 173 and *Simpson* v. *Edmiston* 23 W. Va. 675, and is the settled law of the state. Under this law and the admitted facts in the record the tax deed to the defendants was absolutely void, for all purposes, and the title which alone the defendants claim to have conveyed, [Record 39] was no title.

The bill asserts broadly that Farnsworth and Thomas represented that their title was valid and perfect, and that their tract contained more than twenty thousand acres of land not held by actual settlers. [Record 5.] It is difficult to discover from the equivocal structure of the answer whether Farnsworth intends to admit or deny that such representations were made. He says he did not make false and fraudulent representations that the title was valid and perfect. [Record 34.] This negative is manifestly pregnant when read with the claim made on page 42, that the Act of the Legislature of 1871 operated to cure the defects in the title. The denial may mean only that while representations were made, they were neither false nor fraudulent. The answer also says [Record 34], that Farnsworth never represented anything with respect to the title other than to claim a tax title. The unsophisticated and uninformed reader of this portion of the answer might suppose that when Farnsworth said his title was a tax title, the statement was made deprecatingly, and as though it contained in itself a warning that the title might not be good. But Farnsworth claims, in the very answer in which he makes this suggestion, that his tax title was a good one, and when the witnesses repeat ~~their~~ his statements they appear to have been, not that he *only* had a tax title, but that his title was "beyond the shadow of a doubt," [Record 127,] or that it was "A number one and couldn't be better." [Record

112]. No one can read the evidence without becoming convinced that Farnsworth and Thomas used every means at their command to induce the belief in the minds of the purchasers that the title was a good one. Farnsworth sets down a number of the statements which he made about himself to the score of "innocent vanity." [Record 35, 208.] These statements were evidently made in the course of a studied attempt to disarm suspicion, to prevent inquiry, and to induce the purchaser to rely upon the reiterated representations that the title was good. When it is remembered that important facts known to the defendants were studiously concealed, the case is brought within the boundaries of the severest rule with regard to actionable deceit.

It would not be proper here to discuss the evidence at length. It is sufficient to say that every witness who testified on behalf of the complainant gave evidence either of emphatic representations made with regard to the title, or of facts showing that the defendants knew their title to be bad, or of efforts to lull suspicion, to prevent inquiry, or, as in the case of witness Fleming, [Record 89,] to secure by fraudulent means a favorable report upon a worthless title. Men of more astuteness than Duffner, or of less simplicity than Fish, might have seen enough in the manner or language of the defendants, or might have heard enough in the warnings which seem to have penetrated the hedge with which the defendants surrounded them, to have inspired doubts with respect to the title. But the defendants had artfully forestalled the effect of whatever warning might be conveyed in the phrase "tax title" by commending their tax title as a conveyance from the State. Other warnings they prevented by commending themselves as better than their neighbors, by traducing the characters of the local attorneys who might otherwise have been consulted, and by practicing upon what might be termed the "innocent vanity" of Mr. Fish, the Cleveland attorney, who at last found himself and his client to have been in the plight of the gentleman of old to whom the Good Samaritan rendered valuable services.

Although several witnesses for the complainant had testified to the representations as they are stated in the bill, Farnsworth in his testimony carefully abstained from denying that such representations were made. He says he has no recollection of saying that the title was "positively good," though he did say that he thought it was good, and said this at the time when he was telling Duffner how good and great a man he himself was. [Record 208] The falsity of the representations will also be found to be admitted, if the usual rule as to averment and denial be applied to this case. The worthlessness of the tax deed, from which the defendants deduced their title, has already been discussed. In the bill it was alleged [Record 10] that the title of William H. Morton, for whose default in the payment of taxes the property was returned delinquent

and was sold, depended upon a number of fraudulent papers which are particularly described. Farnsworth's answer [Record 41] contains no denial of these averments, but only a denial that he made representations with respect to Morton's title. Thomas' answer [Record 70] makes no allusion whatever to these averments. On the pleadings, therefore, what is said in the bill with respect to Morton's title, is admitted.

The bill alleges that the title of the defendants is invalid by reason of the fact that the same tract of land was owned by other persons claiming under different and valid titles, and the bill specifies a number of better titles covering various portions of the tract. A birds-eye view of the interferences may be obtained from an inspection of the plat opposite page 148 of the record. Farnsworth in his answer does not deny, but satisfies himself with not admitting the existence of these other and better titles, but Thomas calls for proof. The proof was furnished in the mass of documentary evidence noted in the decree on page 240 of the record.

To the position that the Morton title was invalid because of the fraudulent character of the deeds through which it was deduced, as well as because of the existence of other and better titles, the defendants answer that their tax deed gave them a valid title because the land was sold in Morton's name for the taxes for 1876, and because this tract was not charged with the taxes for that year to any other person. In support of this claim the defendants rely upon the Acts of 1872–3, chapter 117 section 25. This section is as follows:

"When the purchaser of any real estate so sold, his heirs or assigns, "shall have obtained a deed therefor according to the provisions of this "chapter, and caused the same to be admitted to record in the office of "the clerk of the county court of the county in which such real estate or "the greater part thereof may lie, such estate shall stand vested in the "grantee in such deed in and to said real estate, as was at the com- "mencement of or at any time during the year or years for which the "said taxes were assessed vested in the party assessed with the taxes for "which it was sold, and in any other person or persons having title "thereto, who have not in his or their own name been charged on the "assessor's books of the proper county or district with the taxes on said "real estate for the year or years for the taxes of which the same was so "sold, and actually paid the same as required by law, notwithstanding "any irregularity in the proceedings under which the said grantee claims "title, unless such irregularity appear on the face of the proceedings of "record in the office of the clerk of the county court, and be such as "materially to prejudice the rights of the owner whose real estate is sold, "and it be clearly proven to the court or jury that such diligence has "been exercised by the party in whose name it was sold that but for

"such irregularity the said party would have redeemed the same under "the provisions of the fifteenth and sixteenth sections of this chapter. "When there are more than one of such owners who are co-tenants of "the real estate, if the same be charged to one of them alone or one and "others without naming the others, such estate as was vested in all, or " any or either of them, shall pass to the grantee in such deed. No ir- "regularity or overcharge as to a part of such taxes or purchase money, "nor payment of a part of such taxes, shall invalidate the sale, except "as to a part of the real estate so sold proportioned to the whole thereof, "as such part of the taxes or purchase money is to the whole thereof. "If the real estate be charged to a trustee by name either with or with- "out the addition of "trustee," or where there are more than one trus- "tee, if it be charged to one or more of them, and others without nam- "ing the others, and with or without the addition of "trustees" or if it "be charged to such trustee or trustees by description, without naming "any of them, the title of such trustees and of each and every person for "whom or whose use the said real estate was held in trust by such trus- "tee or trustees, shall pass to the grantee in such deed. If at the time "of such sale the real estate sold be under a mortgage or deed of trust, "or there be any other lien or encumbrance thereon, and the mortgagee, "trustee cestui que trust, or person holding any such lien or encumbrance, "shall fail to redeem the same within the time prescribed by the fifteenth "section of this chapter, then all the right, title and interest of such mort- "gagee, trustee, cestui que trust, and of the person or persons holding any "such lien or encumbrance on the real estate so sold and not redeemed, "shall pass to and be vested in the grantee in such deed; and his title "to the premises shall in no way be affected or impaired by any such "mortgage, deed of trust, lien or encumbrance. And no irregularity "as to the manner of laying off any real estate so sold or in the plat, de- "scription or report of the surveyor or other person, shall after the deed "is made, invalidate the sale or deed. If the deed be valid under the "sale for the state taxes, it shall not be affected or impaired by any irreg- "ularity in the proceedings and sale for the county and township or dis- "trict taxes, or either."

No one has ever supposed that this act did more than to vest in the purchaser at a tax sale whatever title had fallen into the state by forfeiture on the part of claimants other than the one in whose name the land was sold. The purpose of the statute was not, as might seem from a glance at it, to rob persons of land which they owned, but to ~~oust~~ quiet and put to rest just such antique titles as the present one, unless their owners should value them sufficiently to pay the taxes on them. Within the very letter of the statute, however, it was essential that the defendants, in making good their claim under it, should show that this tract of

land had not been charged on the assessor's books with the taxes of 1878 in the name of any other person than Morton. The defendants endeavored to make this showing by the testimony of McWhorter, the clerk of the county court of Upshur County, [Record 86,] and did show that this tract of forty thousand acres was not charged to any other person for the year 1876. On looking at the plat [Record 146] it will be seen that the lines of no other interfering survey correspond exactly with the lines of this forty thousand acres tract. If therefore the Thomas Bond survey of sixty-nine thousand acres were placed upon the assessor's book for the year 1876, it would not there appear as the Thomas Wilson survey, or tract of forty thousand acres, and the clerk would be able to examine his book and say that the forty thousand acres tract was not on it, although the Thomas Bond survey was. But the land included in the Bond survey is the same, to the extent of many thousands of acres, as the land included in the Wilson survey, and if the owners of the Bond survey paid these taxes for the year 1876, and had their land entered in their own names, their title would not be forfeited, and would not pass under the Act of 1872–3 to the purchaser of the Wilson survey. And so the clerk says [Record 89] that while this tract was not entered as a single tract of forty thousand acres in the name of any other person, the land included within its boundaries was entered for that year in the names of various persons in smaller tracts. Thus the ingenious fabric of theory which the defendants or their counsel had built up, falls to the ground for want of facts to support it.

The defendants relied in the court below upon the Act of 1871, chapter 194, which is as follows:

Be it enacted by the Legislature of West Virginia:

"When any real estate has been, since the formation of this state, or "shall be hereafter sold for the non-payment of taxes thereon, and pur- "chased for and vested in the state, and the same, or any part thereof, "shall be hereafter sold, in the name of any person who has been charged "on the assessor's books with taxes on such real estate, for the non-pay- "ment of taxes thereon, and purchased by any person and not redeemed "within one year from such sale thereof, and he or his heirs or assigns "shall obtain a deed therefor and cause it to be admitted to record, so "that, but for such sale and purchase for the state, or forfeiture to the "state, he or they would have title to such real estate, or any part there- "of, any title of the state, acquired as aforesaid, which it may then have "to such real estate, or any part thereof, shall be and stand vested in "him or them."

It will be seen that this statute also operates in favor of the purchaser at a tax sale only to the extent of vesting in him titles which have previously been forfeited to and vested in the state. Farnsworth in his an-

swer asserts [Record 32] the issue of a patent for this land, and thus shows that the title to it passed out of the state. The defendants do not connect themselves, by instruments worthy to be considered, with this grant to Wilson. Even if they did, it would still be necessary for them to show, not merely that the Wilson title had been forfeited, and not merely that the Wilson tract as such had not been entered on the land books, but also that the very land was not upon the assessor's book for the year 1876 in any other name or by any other description. The contrary affirmatively appears.

The only other answer which the defendants offer to the plaintiff's claim is one which is little creditable to themselves. They say that notwithstanding they may have attempted to defraud the appellee, yet if he, instead of relying upon what they told him, made an independent investigation for himself he cannot recover. The means of investigation were, they say, at hand, and he took advantage of those means, bringing from Cleveland an attorney of his own selection who investigated the title, found it all that had been represented, and advised the payment of the money and the acceptance of the deed. They also allege that warnings had been given to Duffner, which should have protected him against the effects of their fraud. These warnings, however, are positively denied, and the witness, Simons, admits upon cross-examination that the conversation to which he had testified did not take place until long after the transaction had been closed. The other warnings consisted, not in any statements about this particular title, but in general cautions that Duffner should be careful before he paid his money, to see that everything was right.

It may be conceded as a general proposition, that where parties to a transaction deal at arm's length, each relying upon his own knowledge or inquiries, he who has the worst of the bargain cannot fall back upon misrepresentations which had been made to him by the other. In order that they may be the foundation of an action, the misrepresentations must be the moving cause, and must be relied upon, if not wholly, at least in large part. These principles are sufficiently explained by this court in the cases already referred to. But no such case is presented here. The fact that Mr. Fish was an attorney, and one selected by the appellee, cannot avail as a defense. His learning was in the law of another State, and his presence is of no more importance than would have been the presence of any non-professional friend whom Duffner might have brought with him to keep him company in being hoodwinked. And the very bringing of a foreign attorney was a part of the scheme manipulated by the defendants to prevent their unwary victim from escaping from their toils. The investigation made by Fish and Duffner was a mere farce, composed and enacted by the defendants and for their ben-

efit. They showed Fish the books while they made speeches to him asserting the soundness of the title, their own honesty and fairness, and the efforts of a certain New York lawyer to find a flaw in the title. The badness of the title was notorious in the community, yet they kept guard over Duffner and Fish, lest this notoriety should reach them. More than all, while Mr. Fish was floundering among records the effect of which he could not possibly understand, and while they, with simulated fairness, were encouraging him to examine until he was satisfied the books which, as they well knew, could never inform him whether the title was good or bad, they withheld from him information of vital consequence which they knew would have determined him and Duffner against completing the purchase. Totten, a local lawyer, had examined the title, given an adverse opinion upon it, and had been taken to task by Farnsworth for doing so. Judge Hoffman had given an adverse opinion and Farnsworth had seen it. These very defendants, who were clamorously asserting that the title was good, had themselves placed on record, in their application for a reduction of the assessment upon the property, their own statement that more than half of it was held by other and better titles. No one can read the record in this cause without being convinced that both Duffner and Fish were deceived by the defendants, and that Duffner was defrauded of his money.

HENRY M. RUSSELL,

OCTOBER 5TH, 1891. *Solicitor for Defendant in Error.*